BARDEEN'S COMMON SCHOOL LAW.

TESTIMONY TO FORMER EDITIONS.

I. IT SUPPLIES A SPECIAL NEED.

H. R. SANFORD, A.M., *State Instructor of Teachers' Institutes*:—It cannot be called the best, because there is nothing with which to compare it. It is simply invaluable to every teacher.

S. D. WILBUR, *School Commissioner*:—It fully supplies one of the greatest necessities ever experienced by teachers in the rural schools.

ISAAC VAN VALKENBURG, *School Commissioner*:—Your "Common School Law" is just the thing. It gives in a nutshell what we often search over many pages of the "Code of Public Instruction" to ascertain. No teacher should be without a copy of it.

C. WARREN HAMILTON, *School Commissioner*:—I find that many of the teachers of this county have provided themselves with a copy of your "Common School Law." They say that it is to them a most valuable guide, and that as a book of reference on school matters it has no equal. As a commissioner, I keep a copy within easy reach.

NATIONAL TEACHERS' MONTHLY:—It is already adopted as a text-book in many schools, and fully supplies a great necessity.

BUFFALO SCHOOL JOURNAL.—We do not remember to have seen any book like it; and do not now see how any teacher or school officer can afford to do without a copy of this little book. Questions growing out of the working of the school system are classified, and answered by reference to cases and decisions. The author has indeed performed a good but laborious work for the public.

DRYDEN HERALD:—Undoubtedly the best treatise published on the relations of teacher to the pupil, the parent, and the district. It is exhaustive in every particular, and contains all that a teacher needs to know in regard to his rights and duties.

LONDON SCHOOLMASTER:—"Common School Law for Common School Teachers" is the title of a legal treatise well known in the United States to all whom it concerns. It would seem that a similar work, treating of the legal rights, duties, and status of English schoolmasters is much needed

II. EVERY TEACHER SHOULD HAVE IT.

From its first publication, this book has been used as a text-book in all the State Normal Schools of New York, copies being ordered of each successive edition for the text-book libraries. But on April 2, 1879, *Prof.* A. N. HUSTED, *of the State Normal School at Albany*, wrote :—"We think that every member of our graduating class should *own* a copy of your Common School Law. The class numbers forty-five, but some have already purchased. For what will you furnish the books if we take twenty-five or more?"

And when *President* E. P. WATERBURY took charge of that school, he expressed the same wish, as follows :—"I think of recommending all graduates to procure your little volume on School Law. What are the most favorable terms you can give in quantity, say fifty?"

ECLECTIC TEACHER :—This book . . . . should find a place in every teacher's library. It is of special value to all who desire to become posted with reference to progress of the several State systems.

WESTERN ADVERTISER, *London, Ontario :*—This is a very neat and comprehensive digest of the principles of school law. It might be read with profit by any teacher, particularly the chapters on school government and discipline ; it ought to be studied by every teacher in the Union, and it is indispensable to a State of New York teacher.

MICHIGAN TEACHER :—Should be considered a necessary part of pedagogic equipment. The treatise is small, but sufficient and safe.

TICONDEROGA SENTINEL :—No teacher is fully equipped without it.

NORMAL TEACHER :—The author recognizes that among the teacher's first acquirements should be an accurate knowledge of his legal rights. No teacher can spend fifty cents to better advantage than in procuring a copy of this book.

BARNES' EDUCATIONAL MONTHLY :—This unpretending volume contains more matter than many of five times its size. It should be in the hands of every teacher in the United States.

III. IT ENABLES THE TEACHER TO DEFEND HIS RIGHTS.

OHIO EDUCATIONAL MONTHLY :—The title of this book suggests its usefulness. Mr. Bardeen has done his work well. School questions are in many districts constantly arising. In this book can be found answers to many such questions. . . . . Occasionally, however, the teacher is not at fault, and he must defend his rights. This book will show what they are.

NEW YORK SCHOOL JOURNAL :—We think this is a valuable book, for the teacher should know his rights and duties before the law . . . . Such a volume will be found useful to every teacher, giving instruction on points that but few understand.

CHARLES N. HOFFMAN, *Ransomville, N. Y. :*—I received a copy of the School Law last fall. I find it very useful in conducting my school this winter, as I posted myself on all the points of law contained therein. School teachers are too generally ignorant of their rights under the law. I have had some trouble in school, but have been certain of my position, and have nvariably come out all right.

IV. IT IS NEEDED ALSO BY SCHOOL OFFICERS.

Hon. Andrew D. White, LL.D., *while President of Cornell University* :—Accept my thanks for the list of questions on School Law which you were so kind as to prepare for our Examining Committee. They seemed to me in every respect excellent, and they led me to examine very carefully your little book on the general subject, which strikes me as admirably adapted to its purpose. Not only every teacher in the State, but every Member of the Legislature and every Supervisor and School Commissioner, should have one.

Northern Christian Advocate :—It is a valuable manual, valuable not merely to teachers, but to school officers, and all who have any need of acquaintance with school law. It is a small book of only about 150 pages,—an illustration of the maxim : *Multum in parvo.*

Literary Notes :—The book is one of the first in value to the professional teacher and to the school officer.

V. IT IS APPLICABLE ALL OVER THE UNITED STATES.

New England Journal of Education :—This manual, although edited by an able teacher of New York with reference to the laws of that State, is also well fitted in the exposition of principles of school legislation to any State in the Union, and its references to cases cover the judicial decisions of the several States.

Fairfield (Me.) Chronicle :—Although prepared for New York, the general principles laid down and illustrated are applicable in every State in the Union.

Maryland School Journal :—Though written from the standpoint of a New Yorker, the general principles laid down are as applicable in Maryland and Pennsylvania as in New York and Massachusetts. The value of the book is greatly enhanced by references to legal decisions.

COMMON SCHOOL LAW.

A Digest of the Provisions of Common and Statute Law as to

THE RELATIONS OF THE TEACHER

—TO—

THE PUPIL, THE PARENT, AND THE DISTRICT.

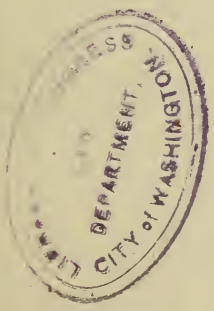
WITH FIVE HUNDRED REFERENCES

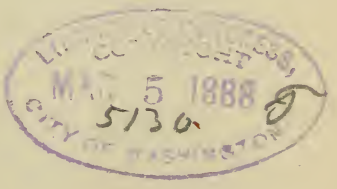
TO LEGAL DECISIONS IN TWENTY-EIGHT DIFFERENT STATES.

FOURTEENTH EDITION, ENTIRELY RE-WRITTEN,

WITH REFERENCES TO THE NEW YORK CODE OF PUBLIC INSTRUCTION, EDITION OF 1888.

By C. W. BARDEEN,
EDITOR OF THE SCHOOL BULLETIN.





SYRACUSE, N. Y.:
C. W. BARDEEN, PUBLISHER,
1888.

BY THE SAME AUTHOR.

Some Facts About Our Public Schools. An argument for the Township System. A paper read before the New York State Association of School Officers at Utica, February 20, 1878. 8vo, paper, pp. 32.....$ .25

Educational Journalism. A paper read before the New York State Teachers' Association at Saratoga Springs, July 7, 1881. 8vo, paper, pp. 30..... .25

The Teacher's Commercial Value. A paper read before the New York State Teachers' Association at Saratoga Springs, July 9, 1885. 8vo, paper, pp. 20..... .25

Teaching as a Business for Men. A paper read before the National Educational Association at Saratoga Springs, July 17, 1885. 8vo, paper, pp. 20..... .25

Roderick Hume. The story of a New York Teacher. 16mo, cloth, pp. 295. 1878..... 1.25

Verbal Pitfalls. A manual of 1500 misused words. 16mo, cloth, pp. 295. 1883..... .75

A System of Rhetoric. 12mo, cloth, pp. 813. 1884..... 1.75

A Shorter Course in Rhetoric. 12mo, cloth, pp. 316. 1885..... 1.00

Outlines of Sentence-Making: a brief Course in Composition. 12mo, cloth, pp. 187. 1884..... .60

Question Book of Stimulants and Narcotics, prepared in accordance with the effort to promote the cause of Temperance, through instruction in the Public Schools. 16mo, paper, pp. 40. 1884..... .10

Brief Geography of Onondaga County, for Public Schools. 24mo, paper, pp. 40, with Separate Map. 1879..... .25

The School Bulletin Year Book for 1879. An Educational Directory of the State of New York. 8vo, paper, pp. 20. 1879..... .25

The School Bulletin Year Book for 1880. An Educational Directory of the State of New York. 8vo, paper, pp. 40. and colored map. 1880.. 1.00

The 250 Regents' Schools of the State of New York, with names of the Principals, and Relative Rank in the Apportionments of the past six years. 24mo, paper, pp. 24. 1881..... .25

School Bulletin Year Book for 1885, giving sketches of the City Superintendents and the County Commissioners, and a list of the Principals of Village Schools and Academies. 16mo, cloth, pp. 160. 1885..... 1.00

Catalogue of Books on Teaching. A Contribution to Educational Bibliography. 8vo, pp. 32, with various Supplements. 1881-1888..... .25

PREFACE TO THE FIRST EDITION.

Some years ago, while principal of a union school in this State, the author petitioned the Board of Education to reduce the school-year from forty-two weeks to forty, and thus close the term by the fourth of July. His arguments were courteously received, and might have prevailed, had not the following consideration been suggested. The expenses of the year had been heavy and it was desirable to secure as large an appropriation as possible from the State; *as this would be proportional to the number of weeks taught*, it was deemed unadvisable to reduce the length of the school-year. And the school completed forty-two weeks. Since the Code of Public Instruction plainly states (1864, 555, 3, III; § 7, **55**) that the apportionment shall be based, not upon the aggregate but upon the average daily attendance, and since after the fourth of July the average daily attendance decreased nearly one-fourth, thus considerably reducing the amount received for the year from the State, the ignorance of School Law displayed alike by teacher and by board was shameful. Yet the same error with the same result was committed last year in another and the largest school of the same county.

This little treatise is not intended to be profound or exhaustive. It aims to present simply, clearly and accurately those features of common and statute law which are most important to teachers. Where the law is definite, full references are given. Where decisions vary, as in regard to the right of parents to control the studies of their children, views upon both sides are presented. In regard to matters left by law to the judgment of the teacher, the author has given expression to what he deems the most general and reasonable opinions.

Thanks are due to the New York State Department of Public Instruction for many courtesies rendered, including free access to official records; and to the Superintendents of many States for copies of their school-laws and other favors.

If this little book helps faithful teachers to know what the law requires and permits, it will accomplish its mission.

SYRACUSE, Aug. 28, 1875.

PREFACE TO THE SECOND EDITION.

The first edition of this work has been so readily exhausted and so favorably received that the author has felt it undesirable to change it essentially. The general amendment to the school-law, interesting a year ago when it had just passed, is now omitted, the single change which it made in the law affecting teachers being incorporated in the text. The written questions given at the first examinations for State Certificates are added. The prevailing law in regard to the power of trustees to enforce attendance at school is illustrated at some length. No error of statement has been discovered by the author, except in regard to the allowance to teachers of wages for time spent at teachers' institute. Later decisions of the State Superintendent than any then recorded make it obligatory upon the trustees, instead of optional; and the correction has been made accordingly. No other material alterations have been made in the matter. In the form, larger type and a more open page have been substituted, without making the book less convenient for the pocket.

The author trusts that the favor which greeted the first edition will welcome the second.

SYRACUSE, June 7, 1876.

PREFACE TO THE FOURTH EDITION.

Among the teacher's first requirements should be an accurate knowledge of his legal duties and of his legal rights. Unfortunately, he is usually satisfied to follow local traditions, and he often learns only by suffering the legal penalty of ignorance that there are established principles of law affecting all his official relations. To be successful, he must confidently "go ahead," but to be sure he is right, he must know the exact bounds of his legal authority.

These bounds are defined partly by statute law and partly by decisions at common law. Statute law concerns itself mainly with the details of taxation, organization, and supervision. It usually refers only in general terms to the work of the teacher, and leaves to common law the discussions of his relations to the pupil and the parent. Hence while the laws of the different States are wholly unlike in their provisions for the support and supervision of public schools, they are nearly uniform as to the rights and the duties of the teacher. The general rules laid down in this little treatise are as applicable in California or in Louisiana as in New York or Massachusetts. Where there are differences of detail, the system of New York is followed, with references to the more striking divergencies in other States. The author's constant aim in this revision has been to make the book valuable to every teacher and school-officer in the United States.

Since the first edition of this work was issued, three years ago, the author has been in frequent correspondence with lawyers and school-officers, and he gratefully acknowledges the assistance cordially rendered, especially in the way of full reports of important trials. He is indebted to nearly all the State Superintendents for the latest editions of the school-laws of the various States, and to many of them for private information as to recent decisions. He

has read with interest the series of articles upon school-law now appearing in the *Educational Weekly*, and has frequently cited the "Kentucky School Lawyer," recently issued as an appendix to his report for 1878, by State Superintendent Henderson, of Kentucky.

The frequent references in these pages are to authorities named on pages 89–93. A full index is given at the close of the book.

Trusting that this enlarged edition will succeed to the favor which greeted its predecessors, the author dedicates it to teachers who seek to know their rights and, knowing, dare maintain them.

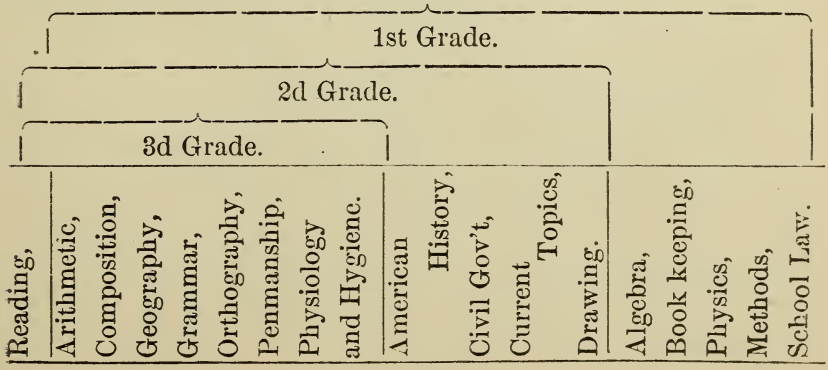
SYRACUSE, September 2, 1878.

PREFACE TO FOURTEENTH EDITION.

It is ten years since entirely new plates have been made for this book, the changes in the law being indicated in successive editions by multitudinous patchings and growing appendices. The present edition has been entirely re-written, and is believed to give not only every change in statute law but every legal decision of moment on the topics treated. By the courtesy of the State Superintendent, I have had the use of a proof copy of the New Code of Public Instruction, not yet issued but soon to be distributed among all the districts of the State of New York, and I have given references to that book by page whenever practicable.

I had hoped to be able to incorporate in this edition a change of the law compelling uniform examinations for Commissioners' Certificates; but this measure, which passed both houses of the Legislature, last winter, was vetoed by the Governor, and is not likely to be brought up at the present session. As four-fifths of the Commissioners of the State have pledged themselves to adopt the system voluntarily, however, it seems desirable to give here an outline of the plan prepared by the State Superintendent and now in general use. It takes the place of the system explained on pages 21–23. As the system is voluntary, and as new Commissioners who try it have the right to withdraw from it at any time, we cannot publish it as part of the law of the State, but its provisions should be clearly understood.

In the first place, all examinations are held on given dates and on questions prepared by the Department and sent sealed to the Commissioners, after the manner of those for Regents' examinations. The subjects are as follows:



Third grade certificates are good for six months, and cannot be issued more than twice to the same person. *Second grade* certificates are good for two years, and can be renewed only upon re-examination. *First grades* are good for four years, and may be renewed without re examination. Only certificates granted under this system may be endorsed by Commissioners in other districts. All papers of candidates must be kept on file, subject to the order of the Department.

Temporary certificates for six weeks may be granted without examination, All certificates and blanks are furnished by the Department.

The general adoption of this system marks a new era in the licensing of teachers in the State of New York, and the results of this experiment will be watched with interest. It may be added that the decisions of the State Department under the present administration show a marked change of tone from those of the past decade, in favor of the teacher—a change well shown by the comparison of the St. Johnsville decision of 1885 (see p. 53), with a letter of the present Superintendent to a parent in the same village (p. 54).

SYRACUSE, Jan. 30, 1888. C. W. BARDEEN.

LIST OF AUTHORITIES CONSULTED.

I. GENERAL COMPILATIONS.

1. WALSH, McN. The Lawyer in the School Room; comprising the Laws of all the States on important Educational Subjects. Carefully compiled, arranged, cited, and explained. 12mo, pp. 161. New York, 1867.

[This book is out of print and rarely found; but it is a reprint of articles published in Vols. II. III. of the *American Educational Monthly*, 1865-'66, which are more often met with.]

2. BURKE, Finley. A Treatise on the Law of Public Schools. 12mo., pp. 154; New York, 1880. $1.00.

3. The Power and Authority of School Officers and Teachers in the Management and Government of Public Schools, and Over the Pupils Out of School, as Determined by the Courts of the Several States. By a Member of the Massachusetts Bar. 16mo., pp. 181; New York, 1885. 75 cts.

4. Legal Provisions Respecting the Examination and Licensing of Teachers. Circular of Information, No. 1, 1883, of the Bureau of Education. 8vo., pp. 46. Washington, 1883.

5. SMITH, Lynden A. Recent School Law Decisions. Circular of Information, No. 4, 1883, of the Bureau of Education. 8vo., pp. 82. Washington, 1883.

II. COMPILATIONS BY STATES.

6. CALIFORNIA. School Law of California, and Rules and Regulations of the State Boards of Education and Examination. List of Library Books, Course of Study for Public Schools, Constitution of the United States and of California, etc. Published by the Department of Public Instruction for the use of schools. 8vo., pp. 151. Sacramento, 1876.

7. COLORADO. Colorado School Laws, 1876, pp. 64, with Instructions by the Superintendent of Public Instruction. 8vo., pp. 64. Denver, 1876.

8.——The School Laws of the State of Colorado, with Notes and Forms for School Officers, together with extract of the law concerning School Lands, and a review of the laws pertaining to the Agricultural College and State University. 8vo, pp. 79. Jos. C. SHATTUCK, Sup't of Public Instruction. Denver, 1876.

9. ILLINOIS. The Illinois School Law: An act to establish and maintain a system of Free Schools, approved April 1, 1872. Including the latest amendments, 1872-1874. 8vo., pp. 66. Springfield, 1874.

10.— -School Laws and Common School Decisions of the State of Illinois. Prepared and arranged by NEWMAN BATEMAN, LL.D. Revised by WILLIAM L. PILLSBURY, A.M., eight years Assistant of Superintendent of Public Instruction. 8vo., pp. 269. Springfield, 1887. $1.50:

11. INDIANA. School Laws of Indiana, as amended in 1865, 1867, 1869, and 1873, with Opinions, Instructions, and Judicial Decisions relating to Common Schools and the Officers thereof, prepared by the Superintendent of Public Instruction. 8vo., pp. 124. Indianapolis, 1873.

12.——School Laws of Indiana, as amended to March 15, 1877, with Opinions, Instructions, and Judicial Decisions relating to the Common Schools and the Officers thereof, prepared by the Superintendent of Public Instruction. 8vo., pp. 151. Indianapolis, 1877.

13.——The School Law of Indiana; Edited by JOHN WALKER HOLCOMBE, Sup't of Public Instruction. 8vo., pp. 118. Indianapolis, 1883.

14. IOWA. School Laws of Iowa, from the Code of 1873, as amended by the Fifteenth General Assembly, with Forms, Notes, and Decisions, for the use and government of School Officers. ALONZO ABERNETHY, Sup't of Public Instruction. 8vo., pp. 108. Des Moines, 1874.

15. KANSAS. School Laws of the State of Kansas, with Notes and Forms for School Officers, together with extract of Laws pertaining to State Institutions, 1873. H. D. MCCARTHY, State Superintendent of Public Instruction. 8vo., pp. 90. Topeka, 1873.

16.——Amendments to School Laws. Passed by the Kansas Legislature, session of 1874. Pp. 15.

17. KENTUCKY. The Kentucky School-Lawyer. Appended to Common School Report for the year ending June 30, 1878. H. A. M. HENDERSON, Sup't of Public Instruction. 16mo., pp. 270. Frankfort, 1878.

18.——The Common School Laws of the State of Kentucky; Edited and published by the Superintendent of Public Instruction. 8vo., pp. 64. Frankfort, 1884.

19. MAINE. Laws of Maine relating to Public Schools, 1878. Compiled by the State Superintendent, and printed agreeably to a Resolve approved Feb. 19, 1878. 8vo., pp. 86. Augusta, 1878.

20. MASSACHUSETTS. School Law, 1875, in 38th Annual Report of the Board of Education, together with 38th Annual Report of the Secretary of the Board. 8vo., pp. 218. Boston, 1875.

21.——School Law, 1887, in 50th Annual Report of the Board of Education, together with 50th Annual Report of the Secretary of the Board. Boston, 1887.

22. MICHIGAN. System of Public Instruction and Primary School Law of Michigan, with explanatory notes, forms, regulations, and instructions; a digest of decisions; a detailed history of public instruction and the laws relating thereto; the history of and laws relating to incorporated institutions of learning, &c., &c. Prepared by FRANCIS W. SHERMAN, Sup't of Public Instruction. 12mo., pp. 640. Lansing, 1852.

23.——The School Laws of Michigan, with Notes and Forms, to which are added Designs for School-Houses, and Styles of Furniture. Published by authority. ORAMEL HOSFORD, Sup't of Public Instruction. 8vo., pp. 182. Lansing, 1869.

24.——The School Laws of Michigan, with Explanatory Notes. Also, Forms for Proceedings under the School Law, and Appendix. Published by authority. DANIEL B. BRIGGS, Sup't of Public Instruction. 16mo., pp. 237. Lansing, 1873.

25.——School Laws of Michigan, enacted and amended by the Legislatures of 1875 and 1877. Compiled at the office of the Superintendent of Public Instruction. 16mo., pp. 16. Lansing, 1877.

26.——The General School Laws of Michigan; with Forms for Proceedings. Compiled at the office of the Superintendent of Public Instruction, 1879. By authority. 8vo., pp. 84. Lansing, 1879.

27. MINNESOTA. Laws of Minnesota relating to the Public Schools and the State Normal School. Prepared by the Superintendent of Public Instruction, with the advice and assistance of the Attorney-General. By order of the Legislature of 1881. 8vo., pp. 64. St. Peter, 1881.

28.——Laws of Minnesota relating to the Public School System, including the State Normal Schools and the University of Minnesota. Prepared by the Superintendent of Public Instruction, with the advice and approval of the Attorney-General. 8vo., pp. 127. St. Paul, 1887.

29. MISSISSIPPI. The Laws in relation to Free Public Schools in the State of Mississippi, being Chapter XVI of the Revised Code, 1880, as amended by Acts of 1886. Together with the Constitutional Provisions relating to Public Schools. Published for information of Superintendents and Teachers. 8vo., pp. 35. Jackson, 1886.

30. MISSOURI. School Laws of the State of Missouri, with Explanations, Decisions, and Forms for the use of School Officers. Published according to law by the Superintendent of Public Schools. 8vo., pp. 80. Jefferson City, 1874.

31. NEBRASKA. The School Laws of Nebraska, as amended, with Forms for the use of School Officers. Published by authority. 8vo., pp. 32. Lincoln, 1874.

32.——The School Laws of Nebraska, as amended in 1875, with Forms for the use of School Officers. Published by authority. 8vo., pp. 102. Omaha, 1875.

33. NEW JERSEY. School Law, with Notes, Blanks, and Forms for the use and government of School Officers, prepared by the State Superintendent of Public Instruction. 8vo., pp. 92. Trenton, 1869.

34.——An act to establish a System of Public Instruction for the State of New Jersey, with the Free School Act and other Supplements, prepared in pursuance of law by the State Superintendent of Public Instruction, for the use and government of County, Town, and District School Officers. 8vo., dp. 33. Trenton, 1871.

35.——School Law, with Notes, Blanks, and Forms for the use and government of School Officers, prepared by the State Superintendent of Public Instruction. 8vo., pp. 112. Trenton, 1878.

36. NEW YORK. Decisions of the Superintendent of Common Schools of the State of New York. Selected and arranged by JOHN A. DIX, Sup't, together with the laws relating to Common Schools, and the Forms and Regulations prescribed for their Government. Published by authority of the Legislature. 8vo., pp. 479. Albany, 1837.

37.——Statutes of the State of New York relating to Common Schools, including Title II. of Chapter XV. Part I. of the Revised Statutes, and all acts subsequently passed connected with the subjects of the said title; with Forms and Regulations respecting Proceedings under those Statutes. Prepared pursuant to the directions of the Legislature by the Superintendent of Common Schools. 8vo., pp. 216. Albany, 1841.

38.——Laws relating to Common Schools, with the Instructions of the Department concerning the duties of the various County, Town, and District Officers, and of the Inhabitants of the Districts. 8vo., pp. 48. Albany, 1844.

39.——Statutes of the State of New York relating to Common Schools, including Title II. of Chapter XV. Part I. of the Revised Statutes, as amended by the Act Chapter 480, Laws of 1847. With Forms and Regulations respecting Proceedings under those Statutes. Prepared pursuant to the directions of the Legislature, by the Superintendent of Common Schools. 8vo., pp. 216. Albany, 1847.

40.——Code of Public Instruction of the State of New York. Prepared and published by order of the Legislature, under the direction of the Superintendent of Public Instruction. 8vo., pp. 492. Albany. 1856.

41.——Laws of New York relating to Common Schools, with Comments and Instructions, and a Digest of Decisions. Prepared by and under the direction of VICTOR M. RICE, Sup't of Public Instruction. 8vo., pp. 720. Albany, 1868.

[This is known as the "Code of 1868," and a copy was deposited with every district in the State.]

42.——Laws of New York relating to Common Schools, with Comments and Instructions, and a Digest of Decisions Prepared under the supervision of NEIL GILMOUR, Sup't of Public Instruction, by EMERSON W. KEYES, late Deputy Sup't of Public Instruction, Counsellor at Law. 8vo., pp. 843 Albany, 1879.

[This is known as the "Code of 1879," but was never distributed at the expense of the State. The Legislature twice voted an appropriation for this purpose, but the Governor vetoed both bills. The "Code of 1888" is not yet published, the references and quotations in this volume having been taken from an advance copy kindly lent the author by the Superintendent of Public Instruction.]

43.——A Digest of the Common School System of the State of New York: together with forms, instructions, and decisions of the Superintendent, and abstract of the various local provisions applicable to the several cities, &c.,

and a sketch of the origin, progress, and present condition of the system. By S. S. Randall, General Deputy Sup't of Common Schools. 16mo., pp. 335. Albany, 1844.

44.——The Common School System of the State of New York, comprising the several general laws relating to common schools, together with full expositions, instructions, and forms for the use of the several school officers and inhabitants of districts, a complete digest of the decisions of the State Superintendent, and the several local provisions for the support of common schools in the cities and villages of the State. To which is prefixed a Historical Sketch of the Origin, Progress, and Present Outlook of the System. Prepared in pursuance of an act of the Legislature, under the direction of Hon. Christopher Morgan, Sup't of Common Schools, by Samuel S. Randall, Deputy Sup't Common Schools. 8vo., pp. 408. Troy, 1851.

45.——History of the Common School System of the State of New York, from its origin in 1795, to the present time. Including the various City and other Special Organizations, and the Religious Controversies of 1821, 1832, and 1840. By S. S. Randall, formerly General Deputy Sup't of Common Schools, and late Sup't of the Public Schools of the City of New York. 8vo., pp. 477. New York, 1871.

46.——The Law and Rules of Practice relating to Appeals to the State Superintendent of Public Instruction. 16mo., pp. 12. Albany, 1884.

47.——The University Manual; Second edition, 1872. 16mo., pp. 295. Albany, 1872.

48.——Laws of the State of New York and of the United States relating to Children; with Notes and References. By Lewis L. Delafield. 8vo., pp. 317. New York, 1876.

49. North Carolina. The School Laws of North Carolina, prepared for *Our Living and Our Dead* by Alex. McIver, Sup't of Public Instruction. 8vo., pp. 14. Raleigh, 1873.

50. Ohio. School Laws: An Act for the Reorganization and Maintenance of Common Schools. Passed May 5, 1873. 8vo., pp, 50. Columbus, 1873.

51.——Ohio School Laws, from Revised Statutes; Part Second, Title III. Passed by the 63d General Assembly, June 20, 1879, and to take effect January 1, 1880: with Notes, Opinions, Instructions, and Blank Forms, prepared by the State Commissioner of Common Schools. 8vo., pp. 194. Columbus, 1879.

52. Pennsylvania. The Common School Laws of the State of Pennsylvania, and Decisions of the Superintendent, with Explanations, Forms, etc Revised and arranged by J. P. Wickersham, Sup't of Common Schools. 24mo., pp. 227. Harrisburg, 1873.

53.——The Common School Laws of Pennsylvania, and Decisions of the Superintendent, with Explanations, Forms, etc. Revised and arranged by E. E. Higbee, Sup't of Public Instruction. 24mo., pp. 324. Harrisburg, 1882.

54.——The Common School Laws of Pennsylvania, and Decisions by the Superintendent, with Explanations, Forms, &c. Revised and arranged by E. E. Higbee, Sup't of Public Instruction. 24mo., pp. 288. Harrisburg, 1885.

55. Rhode Island. A School Manual, containing the School Laws of Rhode Island; with Decisions, Remarks, and Forms, for the use of the School Officers of the State, 1873. Printed by order of the General Assembly. 16mo., pp. 284. Providence, 1873.

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COMMON SCHOOL LAW.

PART I.—THE TEACHER'S QUALIFICATION.

CHAPTER I.

GRANTING OF LICENSES.

1. NECESSITY OF A LICENSE.—In most States of the Union no person can legally contract to teach in any public school unless he holds a certificate of qualification, granted by an authority established for this purpose by statute (N. Y.[1] Minn.[1] Tenn.[1] Vt.[1] Ind.[1] Me.[1] Ill.[1] N. H.[1]).

It is not sufficient that this certificate be obtained after the contract is made, even if it be antedated, for "a teacher's certificate must bear the same date as the examination, and cannot legally bear any other" (Ill.[2] But see Vt.[2]).

The purpose of requiring a certificate is to be assured of the qualifications of the teacher in advance. He is not to practise on his pupils—keep one day ahead of his classes, and thus by going to school to himself fit himself to stand the ordeal of an examination which he could not have stood at the beginning. Such a procedure is fraud upon the district (Ky.[1]).

In Illinois, the certificate must be exhibited to the Directors before the contract is made (Ill.[1, 2]); in Massachusetts, a duplicate certificate must be filed with the Selectmen before pay is drawn (Mass.[1]); in Tennessee, the Commissioners are indictable if they employ a person not holding a certificate (Tenn.[1]).

A teacher who keeps school without such certificate can draw no pay for his services (Me.[2] N. H.[1] Vt.[2]

Ind.[1] Cal.[1] N. Y.[2]); he cannot even teach without compensation (Ind.[2]); he is liable to action for assault and battery if he resorts to the slightest corporal punishment. The teacher gets his authority from his certificate (N. H.[2]).

Horace Mann held, however, that in such a case the teacher could be effectively defended:

On the other hand, some incline to the opinion that a teacher without a certificate, though not *in law* a teacher, yet is so *in fact;* and, while the actual relation of teacher and pupil subsists, all the legal powers of a teacher attach to this relation, and may therefore be exercised by them. If a school kept by a teacher without a certificate is not a public school, then it must be a private school; and the teacher of a private school has as clear a right to inflict punishment, in exigencies that require it, as any other teacher, or as any parent (Mass.[2]).

The courts have taken this view (Vt.[3] N. H.[3]).

As to pupil teachers, Sup't Morrison wrote in Jan., 1886:

The law does not contemplate that pupil teachers shall be employed in any of the schools of the State; but it does not prohibit one pupil from instructing another. If any school is too large to be instructed by the teacher, the trustee should provide an additional teacher. Pupils might perhaps be allowed to instruct other pupils in case they are properly qualified; but this should not be allowed as a substitute for an adequate teaching force (N. Y.[3]).

This is true though the proper authorities neglect or wantonly refuse to examine him (Me.[3,4]). In New York, it is true if a teacher's certificate be annulled, even though the annulment be plainly illegal, and an appeal be immediately taken to the State Department (N. Y.[4]). But in Wisconsin, if the certificate be anulled and the teacher appeals, he may, with the consent of the board, continue his school, and if his appeal is sustained all his rights are sustained (Wis.[1]).

It has been held that not even the superintending officer—the school commissioner or superintendent, for instance—can take the teacher's place and exercise his authority. Horace Mann, however, considered the school committee in higher authority:

During the period of visitation the Committee have the entire control of the school. For the time being it is their school, and the teacher is their servant. They may decide what classes shall be called upon to perform exercises, and in what studies. They may direct the teacher to conduct the examination, or may conduct it wholly themselves, or they may combine both methods. In fine they may dismiss the teacher for the hour, and pursue the examination in his absence. * * * Should any scholar misbehave himself, or prove refractory or contumacious to the Committee, while they are engaged in examining the school, it is presumed they have an authority to suspend, to expel, or to punish on the spot, in the same way that the teacher may do in case of like misconduct committed against himself. (Mass.[7]).

See in this connection Conn.[1] Vt.[3].

2. How Licenses are Obtained.—No person can contract or draw pay as a teacher in the public schools of New York who is not legally qualified by holding an unexpired and unannulled certificate of one of these six kinds:

a. A diploma from some one of the ten Normal Schools.

b. A State Certificate, granted by the State Superintendent.

c. A limited license, granted by the State Superintendent.

d. A certificate, granted by a legally authorized Board of Education.

e. A certificate, granted by a County Commissioner.

f. A testimonial from the Regents of the University, endorsed by the County Commissioner.

Of the 31,325 teachers reported to the Superintendent in 1886, 1,260 were thus licensed by Normal Schools, 805 by the Superintendent, and 29,260 by local officers.

The fact that a license was granted without examination does not invalidate it, provided it was obtained without fraud (Vt.[2]).

a. Normal School Diplomas.—To enter any Normal School, pupils must be sixteen years of age, of good health, good moral character, and average abilities; must be appointed by the State Superintendent upon recommendation of a County Commissioner or City Superintendent; and must pass a fair examination in

reading, spelling, geography, arithmetic as far as the roots, and the analysis and parsing of sentences.

The shortest course occupies two years. Students may enter an advanced class, but must remain at least one year to receive a diploma. These schools are located at Albany, Oswego, Potsdam, Brockport, Geneseo, Cortland, Fredonia, Buffalo, New Paltz, and Oneonta. A legal limit to the number of pupils received has been fixed, but has not yet been approached; so that the schools are practically open to all who wish to fit themselves to become teachers.

b. State Certificates. — State certificates may be granted by the State Superintendent only upon examination. He determines the manner in which such examinations are conducted, and designates the persons to conduct the same and report the result to him. Such examinations must be held at least once in each year, and due notice thereof given.

The examination papers for such examinations as have thus far been held are published in book-form, and can be had from the publisher of this volume.

c. State Licenses.—Temporary licenses to teach, limited to any school-commissioner district or school district, and for a period not exceeding six months, may be granted by the State Superintendent, "whenever, in his judgment, it may be necessary or expedient for him to do so" (16). This power is rarely exercised.

d. City Certificates.—The special laws relating to the schools of several large cities expressly confer the power of examining their own teachers upon the Board of Education or the Superintendent. In these cities such examination is a condition of contract, and must be submitted to even by those who hold diplomas or State certificates (411).

In Ohio, however, "the submission to a local examination, on the part of a holder of a State certificate, can be compelled only by special contract with the Board of Education employing such holder" (O.[1]). Of course, such examination qualifies the teacher only for the schools under direction of the Board of Education which conducts it.

e. Commissioners' Certificates.—Certificates are granted by School Commissioners to teachers within their own districts. For this purpose announcements are made that upon a certain day and at a designated place in each town, the Commissioners will be prepared to examine candidates. Further opportunities are granted as the Commissioner is making his rounds of visits (36), and at institutes.

The law does not fix the standard of examination, and usage varies most lamentably. But the comments of Superintendent Rice (30–37) and the decisions of the State Superintendent establish the practice substantially as follows:

The teacher is examined (α) as to his moral character; (β) as to his learning; (γ) as to his tact in instruction and management.

(α) The candidate must present affirmative evidence of good moral character (410). Certificates should not be granted to persons addicted to drunkenness (410), to the use of intoxicating liquors (410), or to profanity (N. Y.[5]).

The refusal of a teacher to pay his just debts when able to do so, is dishonesty; dishonesty is immorality, and debars from a certificate (Wis.[2]).

But the Commissioner must not consider the candidate's religious or political opinions (30), or any feelings of personal dissatisfaction on the part of the patrons of the school (406). Compare p. 27.

(β) There is probably not a Commissioner in the State who withholds certificates from all whom he

knows to be insufficiently educated. Many attempt to create a demand for good teachers by cutting off the supply of those who are worthless, but cheap. Till such attempts are more universal and more vigorous, it will be farcical to quote these branches, set down by Superintendent Rice, as those upon which teachers must show "minute, accurate and extensive knowledge:"

1. Definition of Words. 2. Arithmetic. 3. Geography. 4. Use of Charts, Globes, and School Apparatus. 5. English Grammar. 6. United States, English, and Continental History. 7. Science of government, including a knowledge of the character and operation of our State and national governments (31).

As an illustration of the requirements where a positive standard is fixed, we copy the following from the School Law of California, pp. 59, 60:

The order of examination, standard credits, and studies required for each certificate shall be as follows:

For Third Grade County Certificates, 80 per cent of the following:

1.	General Questions	
2.	Orthography	100
3.	Grammar	100
4.	Written Arithmetic	100
5.	Geography	50
6.	Reading (with oral exercises)	50
7.	Theory and Practice	50
8.	Defining (word analysis)	50
9.	Mental Arithmetic	50
10.	Oral Grammar	25—575

For Second Grade County Certificates, 80 per cent of the above, and also 80 per cent of the following:

11.	History of the United States	50
12.	Composition	50
13.	Penmanship	25—700

For First Grade County Certificates, 85 per cent of all the above, and also of the following:

14.	Algebra	50
15.	Natural Philosophy	50
16.	Physiology	50
17.	Natural History	50

18.	Constitution of the United States and of California	25
19.	School Law of California	25
20.	Industrial Drawing	25
21.	Vocal Music	25—1000

For *Third*, *Second*, and *First Grade City* and *State Certificates*, applicants must obtain respectively 75, 80, and 85 per cent on the entire list of 1000 credits.

Some New York Commissioners approach closely to this standard of examination, and applicants should be prepared to undergo this test.

(γ) Certificates should be granted at first for a term not exceeding a year, and a second one should not be granted to one unsuccessful through ill-nature, petulance, or want of tact (31).

Commissioners' certificates are of three grades.

(*a*) Those of the third grade are temporary licenses, granted to novitiates and persons who, for lack of experience or ability, have need to acquire the knowledge and skill necessary for higher positions. They are usually for a period of a year, and may be limited to a particular school (N. Y.[6]).

(*b*) Those of the second grade, also for one year, are granted to those who have shown tact in instruction and management, but whose youth and limited education precludes their teaching the higher branches.

(*c*) Those of the first grade are for three years, and are granted to those who have experience, skill, and acquaintance with the entire range of common-school studies.

The qualification required of a candidate is to *teach* the elements of a plain English education. It is not unfrequently the case that a candidate may be thoroughly versed in certain branches, and yet be void of all aptitude to impart instruction and draw out mind [*sic*]. The Board, in grading a certificate, should therefore address itself more to the teaching capacity of an applicant than to the amount of knowledge he may possess. The *art* of teaching being of so great importance, the examiners should value highly a habit of inquiry into the best modes of instruction. If the candidate has read and is familiar with the best treatises on pedagogics, and is a subscriber to a school journal, these facts should add at least twenty per cent to the merit of an examination, and also help to determine the class and grade of a certificate (Ky.[2]).

3. When Licenses may be Withheld.—In this matter the law leaves much to the discretion of the licensing officer, but it does not permit him to refuse a license out of malice or ill-will. It has been decided that in such a case the teacher may recover damages at law; nor is he compelled in order to show malice on the part of the officer to prove personal malice or ill-will, for if the officer acted rashly, wickedly, or wantonly in refusing the license, the jury may find malice (Ill.[4]).

It is obvious that a teacher might have the necessary literary acquirements and capacity to govern, and be a person of good moral character, and yet be an unfit person for the services required. A teacher might have personal habits or manners so offensive as to make his influence upon the scholars injurious. He might be too severe in his reqirements, inclined to devote too much time to the older or better scholars, at the expense of the younger or more ignorant; a person of strong prejudices; a decided partisan and propagandist in politics or religion; unskilful in imparting knowledge, or unable to appreciate the difficulties of beginners; and still be a person of sound morals, great learning, and undoubted capacity to govern. Yet all these considerations might very properly be regarded in considering "his qualifications for teaching" (Mass.[4]).

The Teacher may Appeal.—In New York, the proper appeal is to the State Superintendent. While such an appeal will always receive attention, it will find very little favor with the Department unless accompanied by conclusive evidence of the literary ability of the applicant. The following extract from a decision of Superintendent Van Dyck shows the kind of answer which the Department is frequently compelled to make to appeals of this kind:

The appellant appeals to the law of evidence; he cannot complain if its true application leads to a conclusion opposed to his views and wishes. The controlling facts upon this question of competency are found in the papers and correspondence of the appellant himself. These, with no other evidence before me, would condemn him. His orthography is according to neither

Webster nor Worcester, nor any other lexicographer of whom I have any knowledge, and his grammatical construction is after models found in no English grammar, except among the examples of *false syntax*, of which his sentences afford some notable specimens. He must yet *attend school*, and give particular attention to orthography and the rules of the English language, before he will persuade this Department that the refusal of the Commissioner to grant him a certificate is founded upon any but the most satisfactory reasons (N. Y.[7]).

4. WHEN CERTIFICATES MAY BE ANNULLED.

a. For Evidence against Moral Character.—As certificates of learning and ability to teach, Normal School diplomas and State certificates cannot be annulled, nor can the holder be subjected to further examination (N. Y.[8]), except as a condition of contract, as by city boards (411).

But diplomas, State certificates, and county certificates may be annulled by the Commissioner of the district upon satisfactory evidence against the MORAL CHARACTER of the holder.

Previous to such annulment, the teacher must be given reasonable notice [at least ten days (35)] and an opportunity to defend himself (N. Y.[9]).

The charges must be direct and positive; if of an immoral habit, one or more instances must be specified. Though intemperance is a sufficient charge (N. Y.[10]), the annulment may be withheld where there is fair hope of reform (N. Y.[11]). A single profane expletive uttered out of school and under sudden provocation would not warrant annulment (N. Y.[12]).

The annulment of a commissioners certificate cannot be for moral delinquencies known at the time of issuing the certificate, where no subsequent bad conduct of the kind is known to have occurred (*508*).

b. For Deficiency in Learning or Ability.—Commis-

sioners' certificates may also be annulled by the Commissioner of the district in which the holder is teaching for deficiency in learning or ability, *and upon re-examination* (*507*).

Thus, a Commissioner may annul a certificate given by himself three months before (N. Y.[13]).

The annulment may be effected without notice, if determined upon at a personal visit (409), but only when the result of positive observation (408).

It appears hardly proper that a highly successful teacher, long believed to be excellently qualified, should be forced to abandon her chosen profession in which she has advantageously labored twenty years on the strength of an opinion based on a fifteen minutes' observation of her school (N. Y.[14]).

In his answer the commissioner sets up the inability of the teacher to conduct the school; but it would not seem that the commissioner had sufficient opportunity from his observation to determine the ability or inability of a teacher, to whom he had previously granted a certificate of qualification. If the commissioner depended upon his advice and information derived from others, it is only fair that the teacher should have an opportunity to be heard in his own behalf in meeting, and, if possible, refuting the charges touching his ability to conduct the school. The commissioner after disclaiming any desire or intention to entertain or pass upon any charge affecting the moral character of the teacher, introduces a series of affidavits, directed to the proof of bad temper and inability to rule his own passions, want of self-control and partiality in the conduct of the school on the part of the teacher; and I must assume that it was upon testimony of this character that the commissioner proceeded to annul the teacher's certificate for *incompetency*. It has been frequently held by this Department that when complaints against a teacher of this kind are made the teacher should have an opportunity to refute or answer the charges. The cause assigned for the annulment of the certificate is "incompetency." This is a very grave and serious finding, and should not be reached, as it embraces not merely the ability to teach but may also look to the moral character of the teacher and his learning, without a full and careful investigation on the part of the commissioner, after notice to the teacher that such investigation would be had, giving him an opportunity in the presence of the commissioner to show his ability to teach, if that is called in question, and to refute any charges made by others and upon which the commissioner proposes to act. I look upon the action of the commissioner as a violation of Subdivision 6, Section 13, Title

11, under which he assumed to act, as it cannot be said, within the language and spirit of the statute, to have afforded a re-examination to the teacher. —*Decision Barry vs. Squires, April 2, 1886.*

Inability to maintain order is sufficient cause, but specially adverse circumstances must receive consideration (N. Y.[15]).

Certificates may be anulled for unnecessary and cruel punishment, but not for choking or severe blows where resistence is encountered (409). But certificates cannot be annulled on account of personal ill-will toward the teacher in the district (406, Wis.[3]). Compare p. 21.

5. APPEALS TO THE STATE SUPERINTENDENT.—In regard to this or other acts of school officers by which he feels himself aggrieved, the teacher may appeal to the State Superintendent, whose decision is final (N. Y.[16]).

It is a rule of the Department of Public Instruction that all acts and proceedings will be regarded as regular unless appealed from (293). The bringing of appeals for light and trifling causes will be discouraged (293). If vague or uncertain in statement or illegible and unintellible, appeals will be disregarded (294, 298, 299).

The Superintendent will not assume jurisdiction of cases in the nature of a prosecution for the recovery of a fine or penalty (293); nor will he undertake to settle disputes as to contracts and other matters involving money, where the issue depends upon the truth of diverse statements and should be settled by the courts (N. Y.[17]); or to enforce the payment of money where a decision has been rendered, which should be left to the regular legal authorities.

But a teacher in the State of New York, who promptly and clearly presents to the Department evidence of unjust treatment by any school officers in the discharge of his duties under the school law, may be assured that the case will be thoroughly and impartially investigated, and a decision rendered with no expense to him, from which no appeal can be taken to any court of law.

PART II.—THE TEACHER'S CONTRACT.

CHAPTER II.

MAKING OF CONTACT.

In New York, school trustees exercise authority almost unlimited. They must hire somebody for twenty-eight weeks, but they may disregard the unanimous vote of the district as to the time of opening or closing school (N. Y.[18]), the sex of the teacher (N. Y.[19]), the wages paid (N. Y.[20]), the conditions of the contract (N. Y.[21]), and the individual selected (N. Y.[22] Mass.[5]).

In Mississippi teachers are recommended by trustees, but employed and paid by the county superintendent. The salaries paid from the State fund are fixed by law at $15 to $20 for 3d grade; $18 to $30 for 2d grade; and $25 to $55 for 1st grade. But this may be increased by local taxation. Principals of schools requiring one assistant must hold at least 2d grade license, and principals with two assistants must hold 1st grade (Miss.[1]).

"The argument that some teachers with second grade certificates teach better schools than others with first grades is not tenable" (Dak.[1]).

The law punctiliously forbids a trustee to hire relatives within a given degree, but does not forbid him to hire himself (N. Y.[23] Ind.[3]. But see *546*, Wis.[4] Ky.[3]).

Until the law was changed in 1879, a trustee might make a contract with a teacher which his successor must faithfully fulfil (N. Y.[24]). But now a sole trustee can-

not make a contract beyond the close of the school term which began during his term of office, except by approval of a majority of the voters present and voting at a meeting; nor can three trustees make a contract for more than a year in advance (*248*).

The old law holds good in Michigan (Mich.[1]) and in Vermont (Vt.[4]). In Wisconsin, such a contract may be rejected by the district (Wis.[5]). (See also N. C.[1] Mo.[1]).

1. PREREQUISITES TO CONTRACT.—To enter into a legal contract to teach, the applicant must possess two qualifications—one positive and one negative.

a. The applicant must hold a valid diploma, license, or certificate, as already stated (page 17). A teacher who enters school without being legally qualified violates his contract, and the same is not renewed by his obtaining a certificate subsequently, unless a new contract is made (410, Ill.[4,2,5,6] Ind.[4,5] Minn.[2] See Me.[4,5] N. H.[1] N. Y.[2,5] Vt.[5]).

In Massachusetts even private schools are subject to the approval of the school committee, who must be satisfied that their efficiency is equal to that of the public school (Mass.[6]).

The district has no right to waive this requirement of law and consent to judgment. Any person interested as a taxpayer in the district may enjoin such judgment (N. H.[1] ———, but see Me.[5]).

This does not render invalid a contract of employment entered into with a teacher before he obtains a certificate, *provided he obtains it before he begins to teach.*

An Ohio court ruled:

The law forbids the *employment* of a teacher who has not a certificate. The teacher is not employed within the meaning and intent of this provision until he engages in the discharge of his duties as teacher. The mischief intended to be guarded against was the teaching of a school by an incompetent person, and not the making of a contract by an incompetent person. (Ohio[2]).

State Superintendent Ruggles said in an address at Ballston, N. Y.:

But if a teacher bargains to teach without having a certificate, and, upon getting one, is allowed to begin his school, the bargain is made valid in every particular.

It has even been held that the law is satisfied if the teacher obtains a contract on the evening of the first day of school (Vt.[6]).

In Vermont if a person begins to teach without a certificate and continues to teach after obtaining one, he is considered to have made a new contract, beginning at the time when the certificate was obtained, and having the same terms as the one under which teaching was begun (Vt.[7]).

In Minnesota a person began teaching under a contract. He taught three weeks; then obtained a certificate and made a written contract to run three months from the time he began teaching. Held that he was entitled to wages after certificate was obtained, but to no pay for the previous three weeks (Minn.[3]).

In Illinois, a certifiate was not obtained till the middle of the term. A new contract was entered into at that time to pay the teacher double wages for the rest of the term. This was considered an attempt to do indirectly what there was no power to do directly; and therefore the contract was held void, as was also the contract (Ill.[7]. See also Ill.[2] Ill.[5] Ill.[8] *but* Vt.[8]).

In Missouri it has been held that under a statute requiring the teacher to produce a license before employment, the spirit of the law was complied with if the commissioner did not renew an expired license in presence of the trustees, in writing, but declared the teacher competent and gave his sanction to his going on with the school (Mo.[2]).

b. The applicant must not be related to the trustee or to any one of three, as grandfather, father, son, grandson, brother; or as husband of grandmother, mother, daughter, granddaughter, or sister; or as grandmother, mother, daughter, granddaughter, sister; or as wife of grandfather, father, son, grandson, or brother; or as wife's brother or sister (N. Y.[25]); or as husband of the trustee's wife's sister, or as wife of the trustee's wife's brother (*220.* This is a later decision than N. Y.[26]).

This prohibition cannot be evaded by the trustee's delegating the hiring of teachers to his associates (N. Y.[27]) or to the princi-

pal of the school (N. Y.[28]). But it may be waived by the approval of two-thirds of the voters at a district meeting (144).

The prohibition does not apply to trustees of Union Schools (401).

c. The Right of Minors to Contract. — As many teachers are under age, the question sometimes arises whether a contract with a minor is legal (Wis.[6]). Such a contract is binding upon the district but not upon the teacher, as a minor, who may decline to fulfil the contract, or having taught for a time may decline to teach longer (Wis.[7]).

The laxity of the law toward minors is intended for their exclusive benefit in protecting them from the frauds and deceptions which, owing to their weakness and inexperience, others of riper years might be enabled to practise upon them" (Wis.[8]).

The teacher's wages must be paid to *him*, and not to his parent or guardian even though he is a minor (Ky.[4] Del.[1] Mass.[7,8,9,10] Ia.[1,2] Vt.[9]).

d. The Right of Married Women to Contract.—At common law married women are disabled from making such contracts, but the right to make contracts and receive wages is given them by statute in Colorado, Connecticut, Dakota, Delaware, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Vermont, Wyoming, and Wisconsin, and will doubtless soon become universal.

2. WITH WHOM THE CONTRACT IS MADE.—Every district in New York, not a union school district, has either one trustee, or three, or (temporarily) two.

a. If there be but One Trustee, it is only necessary that the contract be clearly understood and definitely expressed in writing.

b. If there be Three Trustees, the law explicitly requires that the contract be made by a majority; and at a meeting of which all three have been notified (134, 135, 397, 398, Penn.[1] Ill.[9]).

The consent of the three trustees separately makes no contract (397). A contract made by two trustees in the absence of the third from the district may be annulled at any time by a majority of the three (400). But a contract may be made by two trustees when authorized by the third (N. Y.[29]), or by one trustee when authorized to act as agent for the three (N. Y.[30]). A contract made by two trustees without consulting the third may be ratified at a subsequent meeting (400); and a tacit concurrence of the third trustee (N. Y.[31]), or even by two trustees when the bargain is made with the third in good faith (398, 445, *247*), ratifies a fulfilled contract.

c. If there be Two Trustees, in the transition from three trustees to one, the contract should be made at a meeting of both.

But when one gives to another due notice of a meeting which the other neglects to attend, a contract of the one with a teacher satisfactory to the inhabitants of the district may be approved (400).

d. In Union School Districts the contract is usually made with the superintendent or the secretary, as agent for the board of education.

3. The Contract must be in Writing.—At time of employment there must be delivered to the teacher a memorandum in writing, signed by the trustee or trustees or by some person duly authorized by the board of education, in which the details of the agreement between the parties, and particularly (1) the length of the term of employment, (2) the amount of compensation, and (3) the times of payment shall be clearly and definitely set forth.

The form prescribed by the State Superintendent is as follows. Copies may be had of the publisher of this volume.

MEMORANDUM OF HIRING.

REQUIRED BY CHAPTER 335, LAWS OF 1887.

THIS IS TO CERTIFY, that....have this day engaged.....
.....(a duly licensed teacher) to teach the public school of district No ....town of....., county of....., for the term of ....., commencing....., at a.....compensation of.....dollars, payable*.....

Dated.....188....

} *Trustee*..

*Compensation must be made payable at least as often at the end of each calendar month of the term of employment. Chap. 335, Laws of 1887.

Although the statue requires a written contract, a teacher who has taught and received pay for part of the time without one may collect his wages for the rest of the engagement (Ia.[3, 4])

Where the law requires the contract to be in writing, it will be conclusively presumed, in the absence of fraud, accident or mistake, that it contains the entire agreement of the parties as to the subject-matter covered by it (La.[1] Kan.[1]).

CHAPTER III.

CONDITIONS OF CONTRACT.

CONTRACTS should be specific upon three points:

1. DURATION.—This may be either conditional or definite.

a. If hired "During the Satisfaction of the District," the teacher may be dismissed unless he can prove that satisfaction exists (N. Y.[32] Kan.[2] Vt.[10]). But if hired for one month, to continue if satisfactory, and not discharged at the end of the month, he cannot be discharged without other cause (404).

Where the statute empowers the board of directors to employ teachers and remove them at pleasure, this enters as part of any contract made under it, and a teacher may be discharged notwithstanding the terms of his employment (Neb.[1] Mass.[11, 12]; but see Mo.[3]).

b. Definite Periods.—Contracts may be made for a certain number of months, weeks, or days; though the Department recommends that it be by the week (141).

The month is regarded as a calendar month; "from a given day in one month to the same day in the following month" (N. Y. [33], 402). This supplants that decision of the Department dated April 15th, 1854 (N. Y. [34]), which made twenty-four full days, exclusive of holidays, constitute the month. In Maine, four weeks of five and one-half days each constitute the month; in Arizona, Arkansas, California, Iowa, Kansas, Louisana, Michigan, Minnesota, Missouri, Nevada, New Jersey, Ohio and perhaps other

States, four weeks of five school-days each constitute a month. In Pennsylvania, Illinois, and Kentucky twenty-two school-days make a legal month.

c. Holidays.—Unless otherwise specified, the contract requires no school upon Saturday, Sunday, January 1st, February 22d, May 30th, July 4th, the first Monday in September (N. Y.[35]), December 25th, any general election day, or any day appointed or recommended by the Governor or President for thanksgiving, fasting, prayer, or other religious observance (N. Y.[36], Mich.[2]).

For these days no deduction from wages is to be made. But if the teacher keeps the school open on a holiday, he is not entitled to have such day's service counted in lieu of another day not a holiday, except by agreement with the trustees (402).

d. Teachers' Institute.—In allotting school money, the statute allows that a deficiency of not more than three weeks in the twenty-eight be excused when such deficiency was caused by the attendance of the teacher at an institute during his term; and decisions of the State Superintendent later than that of Superintendent Rice (402) require that wages for such time spent at an institute shall be paid to the teacher by the trustees.

Superintendent Draper announces, 1887:

Teachers are entitled to pay for the week in which an institute is held in the district in which their school may be located, provided the school is closed and the teacher is in actual attendance at the institute. They are entitled to pay for only such time as they are actually in attendance, as noted on their certificate.

If the teachers attend the thirty exercises indicated as noted on the certificate during the week (including three for Monday forenoon), they are entitled to full pay for the week, and in like proportion for a less number of exercises attended.

Trustees are prohibited from paying any wages for institute week, unless the school is closed, and the teacher in actual atten-

dance at the institute. Violation of this order will be cause for removal of trustee and annulment of teacher's license.

Trustees are required by law to close the school in their district during the week in which an institute is held within the district or county in which the school is located. District institutes include all schools within the commissioner's district (Compare Cal. [2]).

In Mississippi, a teacher who fails to attend the institute forfeits one day's pay (Miss.[2]), and in Dakota one who refuses to attend the institute may have his license revoked (Dak.[2]).

2. The Teacher's Duties.—To be entitled to the fulfilment of the contract, the teacher must carry out these obligations:

a. To Keep a Successful School.—What is implied in this phrase has already been indicated.

b. To Keep School Open every School-day.—Absence for a single day without consent of trustees annuls the contract (406), even though the consent of one of three trustees has been obtained (N. Y.[37]).

Upon stormy days, when no pupils come during the first hour, the teacher may go home, but if a single pupil comes the teacher must devote to that pupil the whole six hours (Ky.[5]).

A teacher voluntarily leaving before the close of the term, though at the request of the trustees, can recover wages only for time taught (403).

In Vermont, a teacher who contracts to teach for a definite term and leaves the school without just cause cannot sustain an action for such services as were rendered (Vt.[11]).

A teacher finding the school-house locked against him, and leaving without application to the trustees, abandons the contract (405).

But a teacher abandoning his school because not sustained by the trustees in the enforcement of reasonable rules is entitled to wages for the time taught (Vt.[7] Mo.[3], 405).

A teacher who was hired for three months had taught six weeks. The district became dissatisfied, only one or two scholars attended, the stove-legs and pipe were carried from the school-room, and the teacher had to close school. By request of the committee, he held himself ready to complete the term, but the committee did not put the building in order. He recovered wages for the full term (Ill.[9]).

Of course where a teacher is kept from rendering services by the burning of the school-house, but is ready to teach whenever a place is provided, he can recover full wages (Vt.[1 2]). So where school is closed on account of contagious diseases (Mich.[3]).

When school is closed on account of contagious or other sickness, the teacher continuing ready to perform his contract, he can recover full pay. The misfortune of the district cannot be visited upon the teacher. (*N. W. Reporter*, v. 5, 641.)

c. To Instruct all Pupils Admitted.—The question sometimes arises whether the teacher must instruct scholars of more or less than school age, or from outside the district. The answer is plain. The trustees have sole authority to admit pupils or to exclude them, and the teacher must instruct such pupils as they receive (Wis.[9]).

It is held, however, that if the trustees insist on the return to school of a pupil who cannot be controlled by reasonable means, the teacher may quit the school and recover his wages (Vt.[7, 8]).

Wages have been recovered by a teacher who stipulated in the contract that she would not instruct certain children in the district (O.[3]); and by a teacher who was obliged to give up her school because the committee insisted on her allowing a disobedient and unmanageable boy to attend (Vt.[7]; but see Tenn.[2]). But ordinarily a teacher may be dismissed for failure to control the school (Ia.[6]).

d. To Fill the Blanks in the School Register, to preserve it, to verify its correctness by oath, and to deliver it to the district clerk.

If the Register be lost through carelessness, the teacher is entitled to no pay for his services, and from this duty the trustees

have no right to excuse him (Mass.[13] N. H.[4] Vt.[13, 14], etc.). But he may draw pay if he can make oath that it was correctly kept, and lost or stolen through no fault of his (411). Trustees may permit a teacher to fill up the blanks afterward, if the district do not thereby lose its school money (N. Y.[38] Vt.[14])

e. Janitor Work.—Any other duties than these imposed upon the teacher, such as sweeping the schoolhouse, must be expressly stated in making the contract.

The teacher cannot be compelled to do janitor's work on the ground of local custom (Ind.[6]). "A teacher who contracts simply to teach a school for a given number of months, for a given sum, is under no obligation to cut or carry in the fuel, sweep the schoolhouse, or make the fires. It is as much the duty of the Board to have these things done (by the teachers and pupils if they *volunteer* to do them, or by paying for them otherwise) as it is to furnish a broom or a stove. The Board has no power to compel, by rule, either teacher or pupils to do these things. But there will never be any trouble over this question except where there is *outside* meddlesomeness and *internal* contrariness" (Mo.[4]). "In common district schools such duties are, it is true, generally attended to by the teachers and larger scholars, and it is an economical and commendable custom, But it must be voluntary; it is not one of those customs to which long acquiescence has given the force of law" (Ky.[6]).

The trustees cannot deduct from the teacher's wages the sum they have paid for care of the school-house (N. Y.[39]).

3. The Amount and Manner of Payment.—Contracts by the week are most definitely understood, and payment once in four weeks is desirable when it can be made convenient.

In New York payments must be made at least as often as once a month (N. Y.[40]).

Payment must always be made in cash. Debts or notes due third parties, even the trustees, cannot be offset against the teacher's wages (402).

Even though the teacher is a minor, the payment must be made to him, and not to his parent or guardian (Ky.[4]).

a. How to Enforce Payment.—In case the trustees neglect or refuse to pay the wages due, after the public money has been received by the supervisor, they may be sued as a *quasi* corporation, possessing power in this case and for this purpose to bind their district, and to create a corporate liability which will attach to their successors in their official capacity (N. Y.[41] Mo.[5] Pa.[2] Me.[6] Or.[1] N. J.[1] Ia.[5]).

A promissory note made to a teacher for wages earned in the employment of the district is within the scope of this power, and may be safely received and negotiated by the teacher.

CHAPTER IV.

BREAKING OF CONTRACT.

A TEACHER once employed by trustees cannot be dismissed during the time for which he was to continue, without some violation of the contract on his part (R. 142). But trustees may dismiss the teacher:—

1. IF HE CLOSE THE SCHOOL upon any school day (see page 36).

2. IF HIS CERTIFICATE BE ANNULLED, even though the annulment be plainly illegal and an appeal be made to the State Superintendent (see page 18).

It is even held that the teacher may be discharged if he cannot *produce* a certificate, the fact that one has been granted which has been miscarried or otherwise lost not being considered (*529*).

3. INCOMPETENCE OR IMMORALITY.—If they are convinced that he is unfit for the place through incompetence or immorality.

When a teacher who has been irregularly discharged is allowed to continue in the school with the consent of the majority of the trustees, this constitutes a waiver of such dismissal, and a satisfaction of the original employment (N. Y.[42]).

a. General Principles.—The contract of a teacher is for his own personal services (Ill.[10]). The nature and quality of the services were admirably described by Judge Worden:

A teacher doubtless, like a lawyer, surgeon, or physician, when he undertakes an employment implicitly agrees that he will bestow upon the service a reasonable degree of learning, skill, and care. When he accepts an employment as teacher in any given school, he agrees by implication that he has the learning to enable him to teach the branches to be taught therein, as well as that he has the capacity in a reasonable degree of imparting that learning to others. He agrees, also, that he will exercise a reasonable degree of care and diligence in the advancement of his pupils in their studies, in preserving harmony, order, and discipline in the school, and that he will conform himself as near as may be to such reasonable rules and regulations as may be established by competent authority for the government of the school. He also agrees, as we think, by a necessary implication, that while he continues in such employment his moral conduct shall be in all respects exemplary and beyond just reproach (Ind.[7]).

b. Usage in Different States varies somewhat in detail.

Pennsylvania, Illinois, and Kansas give as causes for dismissal: incompetence, cruelty, negligence, or immorality. Ohio: inefficiency, neglect of duty, immorality or improper conduct. Indiana: incompetency, immorality, cruelty, or general neglect of the business of the school. Iowa: incompetency, partiality, or dereliction in the discharge of his duties. Wisconsin: want of sufficient learning, ability to teach, capacity to govern and arrange the school, or of good moral character.

In Maine, the committee may dismiss a teacher "who is found incapable or unfit to teach, or whose services they deem unprofitable to the school." In Massachusetts the committee may dismiss any teacher "whenever they think proper" (Mass.[14]).

Mere Dissatisfaction of scholars and parents is not, in most States, cause for dismissal (Vt.[15, 4]). In Kentucky the causes given are incompetency, neglect of duty, immoral conduct, *unacceptability*, or other disqualification (Ky.[7]); but it is repeatedly affirmed that the *preference* of a majority of the patrons, even if expressed in a written testimonial, is not "unacceptability" in the

meaning of the law, but that specific grounds must be stated and made clear *why* a teacher is unacceptable; that a teacher should not be displaced except on the clearest proof and after thorough investigation; and that a teacher wronged in this respect might seek redress for damages (Ky.[8]). Compare page 34.

c. Incompetence must be Marked. — Incompetence should be marked to justify trustees in this action (Mo.[3] Ill.[11] Vt.[16]).

One decison of the State Department upon an appeal against dismissal reads thus: "The incompetence of the appellant I do not think so conclusively proved as to sustain the presumption of a non-fulfilment of contract by him, though from the testimony on both sides I am disposed to rate him considerably below the grade of a first-class teacher. Still, the trustees can hardly expect to get all the manly and scholarly virtues for $15 a month;" and the appeal was sustained (404, Ill.[12]).

For inflicting unjustifiably severe punishment upon pupils for comparatively slight offences, the teacher should be discharged as either incompetent to fulfil his duties properly as a teacher, or as wilfully regardless of them (N. Y.[43]).

d. Immorality must be proved by Specific Charges.— Sup't Draper ruled, June 11, 1886:

In proceedings of this kind, two rules must be complied with:

1. The charges must be definite and specific. No general charge of immoral character will be sufficient to put a person on the defensive. The charges should specify immoral acts of the teacher and should be drawn up with as much care and distinctness as an indictment, so that she may know just what she must meet.

2. The respondent must be given an opportunity to defend; to confront and cross-examine the witnesses produced by the appellant (N. Y.[44]).

Compare page 25.

e. Proper Method of Procedure.—The possession of a license is *prima facie* evidence of qualification, and the

first effort of the trustees should be to get the license annulled (N. Y.[42] Ill.[12]).

"I find that the appellant holds a State certificate granted to her in 1867, at which time, as at present, the provisions of section 15, title 1, Code of Public Instruction, was operative and controlling. This section distinctly provides that the Superintendent's certificate, while unrevoked, shall be *conclusive evidence* that the person to whom it was granted was qualified by moral character, learning, and ability to teach any common school in the State." The superintendent felt himself by this statute debarred from considering allegations against the moral character, learning, and ability of the teacher, upon an attempt to discharge her from the employment of the board and held that the proceeding should have been one to annul her State certificate (N. Y.[44]). But see page 44.

f. Extracts from two decisions by State Superintendents illustrate the law upon this subject:—

A Case in Rhode Island.—The case then must turn on the questions whether or not Smith did comply with the regulations of the school committee, and whether he did really properly instruct and govern his school....These facts appear clearly to be proved:....That there was a great amount of noise and confusion in the school-room; that scholars were allowed to whisper; that the room was not well ventilated; and that the modes of punishment were not proper; all of which were in direct violation of the regulations for schools posted by the committee on the wall of the school-room; and further, that Smith himself was boisterous and rough in his manner, and not only neglected to give information and assistance to his scholars when asked, but that he allowed the scholars to miscall or mispronounce words in their reading lessons without correction; and, in general, that the scholars did not improve, and were merely losing their time and making a waste of the public school money.....These being the facts in the case, the school committee of Smithfield only discharged the duty imposed upon them by the law and by their oath of office and their act ought to be sustained (R. I.[1]).

A Case in New York.—The annulment of the license dissolves all contracts entered into by virtue of its sanctions. But can the fulfilment of a contract be avoided only in this way? Until the license is revoked, are the trustees bound to retain a teacher obnoxious to the district through immorality, ignorance, or inefficiency? The affirmative of this is a too popular fallacy. The admission of it would be subversive of the principles already enunciated as pertaining to the essential nature of contracts. It cannot be supposed that in case a charge of gross immorality, specifically urged, carrying with it a strong presumption of its truth, were brought against a teacher the trustees must wait for the tedious delay of a formal hearing before a Commissioner, and abide the event which may be determined through insufficiency of evidence, while the moral conviction of the truth of the charges preferred is still strong and abiding. The presence among pupils of a teacher against whom such suspicion should rest, must, of itself, from the suggestions to which it would give rise, promote conditions of mind opposed to the development of virtue and purity of the heart.

This consideration alone would justify the trustees in a summary dismissal of the teacher. This, to be sure, is an extreme case, but it is sufficient to illustrate and to establish the principle advanced, that the trustees may be justified in the discharge of a teacher before the close of the term specified in his contract. In determining what constitutes such justification, it is difficult, not to say impossible, to establish uniform rules.

The decision as to the propriety of the act, and the power to perform the act, alike rest with the trustees. For an abuse of their discretion, or an unwarrantable exercise of their authority, they are of course responsible. On complaint of the person sustaining what he considers a grievance or wrong, the issue becomes one of fact, and it devolves upon the trustees to show by evidence that the teacher lacked the character, the ability, or the will essential to a proper discharge of his duties, and that he failed thus to fulfil the obviously implied conditions of his contract. The mere fact of dissatisfaction on their part, or that of the inhabitants, is not sufficient to justify the discharge of a teacher employed for a definite period. The tribunal before

whom the action is brought, as a court, a jury, or this Department are the constituted judges of fact, and will determine, from the evidence presented, whether the incompetence of the teacher, as resulting from ignorance or indifference, is fully proved, and hence his discharge upon the ground of a violated contract clearly justified.

In the case here presented, the trustees offer evidence bearing upon the management and general deportment of the appellant in the school-room, and his intercourse with his pupils, tending to show disregard to the proprieties and courtesies incident to his position. *Trifling and irrelevant conversation, oft indulged and long continued with pupils in school hours; prying and impertinent questions in regard to domestic affairs; low, and at the least suggestively vulgar, remarks to the older female pupils; rude, boisterous, and harsh language, as a means of or substitute for discipline,* are alleged and proved by the testimony of his pupils, with a circumstantial minuteness that requires enphatic denial or plausible explanation to invalidate or palliate. The appellant rests with a vague declaration concerning the colorable nature of the testimony, and with affidavits relative to the satisfaction uniformly attending his engagements as a teacher heretofore in the same vicinity.

These are insufficient to rebut the presumption raised by the evidence submitted by the trustees, that they were justified in their dismissal of the appellant. They have raised that presumption strongly in their favor, and the appellant has failed to meet the issue. It is proper and just to remark, that the justification of the trustees does not proceed from any alleged or proved inability or immorality of the appellant; his literary qualifications and his moral character stand unimpeached, and, it is to be hoped, unimpeachable. But his inefficiency appears to have been the result of gross negligence and indifference—a *debilitated will,* rather than of inherent depravity or defective scholarship, a fault which it is earnestly hoped the wholesome practical discipline of this experience will serve to eradicate.

Under the view of the case as above presented, therefore, I must decline to interfere with the action of the trustees, and hold that they have presented a sufficient justification therefor (N.Y.[45]).

4. The Teacher's Defence.—A teacher feeling aggrieved by the action of the trustees in discharging him may either appeal to the State Superintendent, or sue them for his wages, and thus compel them to show cause for his dismissal, and to support their allegations by adequate proof (Ky.[9] Ill.[11]). He may also apply for a writ of *mandamus,* to compel the trustees to reinstate him (Conn.[3]).

In New York, an appeal to the Superintendent is in every way to be preferred. Compare page 27.

After a teacher has obtained a certificate, been employed, and entered upon his duty, he should not be discharged without the clearest proof of his incompetency or palpable neglect of duty, in default of which on the part of the trustees inferior courts should find for the teacher. The testimony of the pupils as to the teacher's fidelity is to be received with much caution, and occasional or trifling errors in recitation, or inaccuracies in scholarship, or casual laxity in discipline, or tardiness of action, or failure to secure the rapid advancement of particular scholars—these things, whether alleged or real, are inconsequential when weighed against the favorable presumption warranted by the possession of a legal certificate, and the evidence of general success and fidelity (Ill.[12]).

5. Recovery of Wages.—If a teacher lawfully employed is dismissed without just cause, he may receive wages for the whole time for which he was employed (Wis.[10]).

But only for the difference between the stipulated wages and what he earned or might have earned at a similar employment in his own vicinity during the time covered by the contract (2 Greenleaf on Evidence, §161 *a*; 2 Chitty on Contracts, 11th Am. ed., p. 855, *note*).

6. DAMAGES FOR INJUSTICE.—If the trustees have acted wantonly and maliciously, the teacher may proceed against them personally (Pa.[3]); but he must show clearly that malice and injury were the impelling motives (Pa.[4]).

A letter from an inhabitant of the district to the trustees complaining of the teacher is privileged, if written with an honest purpose and for the public good (Mass. [14] Tounshend on Slander and Libel, 385, 399; but see 272).

PART III.—THE TEACHER'S AUTHORITY.

CHAPTER IV.

ABSENCE AND TARDINESS.

THE general management of the school devolves by law upon the trustees, (Mass.[16-20] Ia.[7] O.[4, 5] Wis.[11] Me.[7] Vt.[17] N. Y.[46]), and in large towns is commonly regulated by their distinct orders. But in smaller districts, the trustees being often incompetent or indifferent, much of this authority is intrusted to the teacher or assumed by him. Indeed, many things must necessarily be left to his discretion.

"The law prescribes the branches to be taught, and the Board may add others; but neither the law nor the Board prescribes the precise methods of teaching and handling classes. The teacher may require, for instance, that the class in grammar shall compose as well as analyze; that a class in geography shall draw maps as well as recite from the book; work examples on the blackboard as well as on the slate. The Board makes general rules. The teacher may and must have some rules to keep order, and may enforce them, although the Board makes no rules at all —which is usually the case. Where the Board makes rules the teacher must carry them out; but from the nature of the case, and entirely apart from what the Board does, he must govern the school, and to this end enforce obedience; it being understood, of course, that he is not unreasonable in his requirements" (Wis.[12]).

Nor is it necessary that rules established by trustees be recorded, or even adopted at a regular meeting (Mass.[19, 21] Wis.[13] Ind.[8] N. H.[3]).

New Hampshire, Wisconsin, and Missouri, however, enact that rules shall take effect when a copy has been deposited with the town-clerk; and Rhode Island requires that the rules shall be posted up in every school-house.

Yet it must never be forgotten that in regard to the Hours of School, the Course of Study, the Adoption of Text-books, the General Regulations, and the Expulsion of Pupils, the action of the teacher has no legal force until formally endorsed by the trustees.

However unbounded the confidence placed in him, a wise teacher will secure the sanction of the trustees before he announces his own course as to these questions.

1. THE HOURS OF SCHOOL.—*a. Usage.*—The hours of school are usually six, three in the morning and three in the afternoon, with recesses in the middle of each session of ten minutes for the boys and ten minutes for the girls.

Obvious hygienic requirements make recesses for each sex indispensable where the playgrounds are not wholly distinct.

In some schools no recesses are given, the sessions being shortened proportionally. It is becoming customary to dismiss primary classes before the close of each session, and is usually advisable.

In California, "no school must be continued in session more than six hours a day; and no pupil under eight years of age must be kept in school more than four hours a day" (Cal.[2]). In Kentucky, the youngest class cannot be confined more than three hours a day (Ky.[9]). In these matters the teacher is bound to follow the usage of the district, unless authorized by the trustees to make changes.

It has even been held in Wisconsin that "the school day is fixed by a custom so universal and well understood as to have almost the entire force of law, at six hours. If a district were to depart from this rule, it is doubtful if it would be entitled to draw school money. When the law says '100 days shall be understood to constitute the five months required,' it must be understood to mean 100 school-days of six hours each, and not 150 days

of four hours each" (Wis.[14]). In New York, however, this matter is wholly in the hands of the trustees, and many schools have but one session of five hours, instead of two of three hours each.

b. Instruction in Outside Branches.—In Kentucky, teachers are allowed, with the consent of the trustees, to give instruction in branches outside of the regular course of study during school hours, and to charge tuition therefor (Ky.[7]). This is an unusual and an unwise privilege, as it tempts the teacher to neglect the important branches for those which may be superinduced but should never be substituted.

c. Regularity and Punctuality Compulsory.—In regard to the hours of school and the regularity of attendance, recent decisions show that rules established by the trustees are absolute and final.

The Supreme Court of New York decides that the rule requiring regular and prompt attendance is for the good of the pupil. It also says that the good of the whole school cannot be sacrificed for the advantage of one pupil who happens to have an unreasonable father; and as the law now is, no other means can be devised for enforcing regular and prompt attendance than the penalty of expulsion (N. Y.[47]).

In Massachusetts, the committee have "the power of *determining what pupils shall be received* and *what pupils rejected.* The committee may, for good cause, determine that some shall not be received; as, for instance, if infected with any contagious disease, or if the pupil or parent shall refuse to comply with regulations necessary to the discipline and good management of the school" (Mass.[17, 18, 22] Me.[3] N. Y.[48] Vt.[17, 18] Ia.[7]).

"A child shall not be allowed to attend the public school while any member of its household is sick of small-pox, diphtheria, or scarlet fever, or during two weeks after the death, recovery, or removal of such person" (Mass.[34]).

In Missouri, suspension for six half days' absence in four consecutive weeks has been upheld (Mo.[6]); and in Iowa for six half

days' absence and two instances of tardiness in the same time. In the last case, Judge Beck said:

It requires but little experience in the instruction of children and youth to convince any one that the only means which will assure progress in their studies is to secure their attendance, the application of the powers of their minds to the studies in which they are instructed. Unless the pupil's mind is open to receive instruction, vain will be the effort of the teacher to lead him forward in learning. This application of the mind in children is secured by interesting them in their studies. But this cannot be done if they are at school one day and at home the next, if a recitation is omitted or a lesson left unlearned at the whim or convenience of parents. In order to interest a child he must be able to understand the subject in which he is instructed. If he has failed to prepare previous lessons he will not understand the one which the teacher explains to him. If he is required to do double duty, and prepare a previous lesson, omitted in order to make a visit or do an errand at home, with the lesson of the day, he will fail to master them and become discouraged. The inevitable consequence is that his interest flags and he is unable to apply the powers of his mind to the studies before him. The rule requiring constant and prompt attendance is for the good of the pupil and to secure the very objects the law had in view in establishing public schools. It is therefore reasonable and proper.

In another view it is required by the best interests of all the pupils of the school. Irregular attendance of the pupils not only retards their own progress, but interferes with the progress of those pupils who may be regular and prompt. The whole class may be annoyed and hindered by the imperfect recitations of one who has failed to prepare his lessons on account of absence. The class must endure and suffer the blunders, promptings, and reproofs of the irregular pupils, all resulting from failure to prepare lessons which should have been studied when the child's time was occupied by direction of the parent in work or visiting.

Tardiness, that is, arriving late, is a direct injury to the whole school. The confusion of hurrying to seats, gathering together of books, etc., by tardy ones, at a time when all should be at study, cannot fail to greatly impede the progress of those who are regular and prompt in attendance. The rule requiring prompt and regular attendance is demanded for the good of the whole school.

Some Special Decisions.—(a). *Tardiness.*

In 1853, the New York State Superintendent decided that "teachers have the right to close the doors of their school-rooms against all pupils who may claim admission fifteen minutes after the time of opening the school" (N.Y.[48]). But more recently the State Super-

intendent has ruled that the teacher should not keep tardy pupils in the entry, especially in cold weather (N. Y.[49]; see Ill.[13].)

In Wisconsin, the Superintendent decides that "to lock the door against tardy pupils, say at ten o'clock, is of doubtful propriety. The school house is a public place. The tardiness may not be the fault of the child. It might be a serious discomfort to the child to be turned back home. Let the school be made attractive" (Wis.[15]). And again: "Tardiness is, of course, a great annoyance. It is difficult to say how far the courts would sustain rules excluding pupils from school for being late. It is doubtful whether it is good policy to turn tardy scholars into the street, perhaps to get into mischief; perhaps to suffer from cold, from waiting outside; certainly to lose more time. Persuasion, attractive lessons in the morning, an attractive school, privation of recesses, final degradation to a lower class if all fails, would perhaps be better remedies (Wis.[16]).

(β). *Suspension for Absence.*—In 1875 the Board of Education of Hornellsville, N. Y., adopted a rule that in every case of absence of a pupil for more than five days during any term for any other cause than sickness or death in the family or religious observance, the absentee should be suspended until the beginning of the next term. Its legality being questioned, the State Superintendent replied:

"Under the provisions of the law cited in your letter of the 19th inst., your Board of Education possesses the power to suspend pupils from school for causes which seem to merit such treatment. In my judgment, however, it would be unwise to enforce strictly the rule referred to in your letter. The object and intention of the law is to get pupils into the schools—not to keep them out." (See also *435*.)

In another case the same Superintendent, Mr. Gilmour, went still further.

Among the regulations of Dist. No. 2, Ellington, was this:

Any scholar absenting himself from any examination or part thereof, appointed by the teachers, without necessity duly certified beforehand, either by himself or his parent or guardian, shall not be admitted to the school afterwards, except by permission of the board and the approval of the principal.

On Feb. 4, 1875, before the written examination, the mother of three boys asked by written note that they be excused from the last days of the term, and withdrew them from the school. On the opening of the next term, the three boys were refused admission under the above rule, the note not being accepted as a sufficient compliance with the regulation. This was over-ruled by Sup't Gilmour who decided that boards of education have no right to make any regulation under which children are liable to perpetual exclusion from school for an act of the parent (*425*).

This view was carried still further under Sup't Ruggles.

In Sept. 1884, the St. Johnsville board of education established the following rules:

The Principal and Teachers of the different rooms may suspend pupils under their immediate control for: 1. Three cases of absence, unless the absence be caused by personal sickness, or serious illness or death in the family, or by some pressing emergency. But one case of absence can be counted in the same day. * * *

The power of reinstatement shall be limited to the Board of Education or the Principal. * * *

Any pupil suspended for any cause shall not be entitled to any privileges of the school until reinstated.

For four such absences the father of Clarence Sanders refused to give any reasons and on Nov. 5, the boy was suspended, and on presenting himself at school the next day was refused admission. His father appealed to the State Department, who on March 20, 1885, decided that the boy must be reinstated, on the grounds (1) that the power of suspension should not be delegated from the Board to a teacher; (2) that to require the parent to state the particular cause for a child's absence or detention is not only unnecessarily inquisitorial, but, logically carried out, would permit the teacher or trustees to pass judgment on the parent's exercise of authority over his child.

This decision (reported in full in the *School Bulletin* for May, 1885) caused wide and generally unfavorable comment.

The present Superintendent, Mr. Draper, takes a wholly different view, and gave to the author for publication in this volume a copy of the following letter, showing the ground now taken by the State Department:

That the school authorities have power to exclude from the benefit of the schools, pupils who refuse to comply with reasonable regulations relative to attendance, I have no doubt. I consider a regulation to the effect that a pupil who is absent or tardy shall bring his teacher a written excuse from his parent or guardian, to be entirely proper, and the Department will therefore sustain you in enforcing it. The letter addressed to one of your teachers is a highly improper and insulting one. If this parent persists in sending his child to school with irregularity and in refusing to give any proper excuse for this course, you will be justified in excluding the child altogether.

The schools are surely for the benefit of all and all have common rights in them, but these rights must not be abused by any individual to the injury of others. If one parent can maintain the position which this one assumes, then *all* can and if all can then the school system is liable to utter overthrow and distruction. This of course we cannot concede. You are advised to notify the person writing the letter which you enclose to me of the contents of this communication; to receive the child into the school if the parent manifests a disposition to comply with the law. Otherwise you will be upheld in excluding the child in question.

Here is a Missouri decision:

Suppose rule 11 to be inverted, and instead of reading as it now stands should read thus: "Any pupil is at liberty to go a-fishing during school hours and be absent a half day or a whole day and as many days as he pleases, provided he conducts himself decently when in attendandance in school." And this is the point to which the agreement of the plaintiff tends. The pupil, it is urged, is at liberty to be absent when he pleases, and such absence is a matter solely between him and his parents. But the studies in our public schools are, I presume, classified according to the ages and advancement of the scholars; and the continued or repeated absence of one of a class not only is injurious to the absentee, but if allowed beyond a certain point is calculated to demoralize those who attend, and damage the orderly instructions of the teacher. Taxes are not collected to pay teachers to sit in front of empty benches, or to hunt up truant boys. Such absences, when without excuse, are the fault of the parents, whose business it is to see that the attendance of their child is regular, unless prevented by causes which will, of course, be an excuse under the rule now in question (Mo.[6]).

See also Mass.[21] Ill.[14]

(γ) *Exercises outside of the School Building.*—In 1874, two girls in the Dover (N. H.) High School refused to attend examination and graduation in the City Hall on the ground that it was too public. The principal suspended them. The parents applied to Judge Doe for an injunction against the suspension, and the case was referred to the full bench at Concord. The application was denied, on the ground that the subject-matter was within the jurisdiction and discretion of the school authorities.

(δ) *Catholic Holidays.*—In 1874, certain Catholic children of Brattleboro were expelled from the schools for attending Mass on the holy day of Corpus Christi, though their pastor, Father Lane, had asked permission from the committee for their non-attendance at school that morning. Judge Barrett, of the Supreme Court, decided that the committee were legally justified in acting as they did; and went on to show that school committees are supreme in their rights over parents; that a citizen has no more right to disregard the rules made by a school-committee than he has to defy the law by which the committee was empowered (Vt.[17]).

(ε) *The Jewish Sabbath.*—In 1875, a Jewish girl was expelled from the Sherwin School, Boston, for not attending the Saturday sessions. What followed is told thus:

> The father sent a petition to the Board. That petition was referred to the Sherwin committee. They heard the father's statement. He explained why he had kept the child from the school, and the position of the Israelites in respect to Saturday, their Sabbath. He asked that he might be permitted to send his child to school five days in the week, keeping her from school

every Saturday. It was explained to him why the committee could not officially make such an exceptional arrangement. They respected, however, the father's scruples in regard to work on the Sabbath, and agreed that the child might be excused on Saturdays from what he regarded as "manual labor"—writing, ciphering, and the like. The father seemed satisfied with the action of the committee; and his child has ever since been a regular attendant upon the school.

A Caution.—It is therefore safe to consider this the prevailing law, at least in the Eastern States. But we believe it is sometimes carried so far as to work our school system serious injury.

In this last case we have intolerance enforcing hypocrisy. The child's religion either does forbid her to work on the Sabbath, or it does not. If it does not, there is no reason why she should not "write, cipher, and the like," as well as the rest. If it does, then she should not attend school at all. Her presence, under these conditions, teaches every Christian pupil in school that one's lesson may be studied or any mental labor done on Sunday which does not involve "writing, ciphering, and the like."

Opposing Decisions.—Moreover, there are decisions on record which conflict with those we have cited.

The Supreme Court of Illinois has decided that "school-directors can expel pupils only for disobedient, refractory, or incorrigibly bad conduct, after all other means have failed. Expulsion is not designed as a means of punishment" (Ill.[15]). This decision is quoted and endorsed by the State Superintendent of Iowa (Ia.[8]).

Judge Higbee, of the Fulton County (Ill.) Circuit Court, decided that neither school-teachers nor school-directors can expel a child from the public schools for absence. Such expulsion he holds to be arbitrary, unjust, and unlawful. He assigns but one cause for expulsion, and that is "incorrigibly bad conduct" (Ill.[16]).

CHAPTER VI.

CONTROL OF THE CHILD'S STUDIES.

1. USUALLY ATTRIBUTED TO THE TRUSTEES.—The power not only of selecting the branches to be taught in school, but also of requiring pupils to pursue them, has been usually attributed to the teacher, subject to the control of the trustees.

The single requirement in New York is that physiology, so far as it pertains to the hygienic effects of stimulants, shall be taught in every school receiving public money. See also Mass.[28] Minn.[5], etc.

In Massachusetts these branches are compulsory in common schools; orthography, reading, writing, English grammar, geography, arithmetic, algebra, United States history, good behavior, physiology and hygiene, and drawing, while manual training and sewing are permissible (Mass.[24]). Text books must be furnished free (Mass.[25]).

German may be included in the course of study (Ill.[17]).

Thus composition may be required of all (N. Y.[48]), and a girl may be expelled for refusing to declaim, even though her father has conscientious scruples against females' speaking in public (N. Y.[49]).

In November, 1871, Superintendent Clark, of Defiance, Ohio, suspended the son of J. J. Sewell, for persistent failure to have at the proper time his rhetorical exercises. The father brought suit for $1,000 damages. On appeal to the Supreme Court, under § 54 of the act of May 1st, 1873, the decision of the lower court was affirmed that there was no cause of action, and the defendant was allowed the costs of prosecution (Ohio[6, 4]).

2. Should be Exercised with Caution.—But this power should be exercised with moderation; for though the courts of other States have, in many instances, sustained this view of the teacher's authority (Me.[7,9] Vt.[19] Mo.[7] Wis.[17] Ky.[10,11] Mass.[16, 17, 20] Ia.[9] N. H.[3] Cal.[3]), yet other courts have held that parents have the privilege of limiting and naming the studies their children shall pursue in the public schools, providing they designate such studies as are there taught.

The Wisconsin Decision.—The case most commonly quoted is the following:

Upon the 18th of December, 1872, Annie Morrow, a qualified teacher under a contract with the District School Board, commenced teaching a district school in Grant county. James Wood, an inhabitant of the district, sent his son, a boy about twelve years of age, to the school. The defendant wished his boy to study orthography, reading, writing, and also wished him to give particular attention to the subject of arithmetic, for very satisfactory reasons which he gave on trial. In addition to these studies the plaintiff at once required the child to also study geography, and took pains to aid him in getting a book for the purpose. The father on being informed of this, told the boy not to study geography, but to attend to his other studies, and the teacher was properly and fully advised of this wish of the parent, and also knew that the boy had been forbidden by his parent from taking that study at that time. But claiming and insisting that she had the right to direct and control the boy in respect to his studies, even as against his father's wishes, she commanded him to take his geography and get his lesson. And when the boy refused to obey her and did as he was directed by his father, she resorted to force to compel obedience. All this occurred in the first week of school. . . . . Under the circumstances, the plaintiff had no right to punish the boy for obedience to the commands of his father in respect to the study of geography. She entirely exceeded any authority which the law gave her, and the assault upon the child was unjustifiable (Wis.[11]).

The following contemporary expressions of opinion by leading educators will be found of interest.

Assistant Superintendent J. B. Pradt, of Wisconsin, said:

I should have held with the Circuit Court, that the teacher, not as an individual, but as the representative of the school authorities, is justified in requiring the pupil to attend to the usual studies of his class, and that if exemption is granted in any special case, it should be, not at the demand of the parent as a right, but with the consent of the Board. . . . . But if the teacher, who very likely was young and inexperienced, had been thoughtful enough to refer the matter to the Board, and the Board had sustained the position that all pupils must take all the studies of the class unless exempted on request of the parent, as a favor, the question of paramount authority would have been raised in a more satisfactory way, and the judgment of the higher court would have covered a broader ground (Wis.[18]).

Superintendent J. P. Wickersham of Pennsylvania, prefaced a report of the decision with this remark:

We are not quite sure that the decision would be considered good law in Pennsylvania, and yet it seems to rest on ground of considerable strength.

He also quoted these conclusions of Superintendent Bateman, of Illinois:

"(1) Pupils can study no branch which is not *in* the course prescribed by the directors (trustees).

"(2) Pupils can study no branch of such prescribed course for which they are not prepared, of which preparation the teachers and directors shall judge.

"(3). Pupils shall study the particular branches of the prescribed course which the teachers, with consent of the directors, shall direct, unless honest objection is made by the parents.

"(4) If objection is made in good faith, parents shall be allowed to select from the particular branches of the prescribed course for which their children are fitted those which they wish them to study; and for the exercise of such right of choice the children shall not be liable to suspension or expulsion."

This fourth conclusion was pronounced sound by Superintendents Conant, of Vermont; Briggs, of Michigan; Etter, of Illinois; and Burt, of Minnesota. It was considered unsound by Superintendents Kiddle, of New York City; Philbrick, of Boston; Harris, of St. Louis; Stockwell, of Rhode Island; Newell, of Maryland; Smart (C. S.), of Ohio; Smart (J. S.), of Indiana; Henderson, of Kentucky; and Trousdale, of Tennessee. Superintendents Apgar, of New Jersey, and Abernethy, of Iowa, stated that in these

States the law explicitly conferred all right in this matter upon Boards of Education. Letters from these gentlemen appeared in full in the *School Bulletin* for June, 1875, and in the first edition of this volume.

In Iowa it was decided:

That the father has the right to the care and custody of his minor children, and to superintend their *education* and nurture, is a proposition that does not admit of reasonable doubt (Ia.[10]).

In Illinois, a boy had omitted, on account of ill-health, the study of English grammar. On application he was admitted to a high school. The teachers of the school discovered that he was deficient in this study, and they required him to pass an examination for it. Not complying, he was expelled. A mandamus was issued to compel the trustees to admit him again. The trustees took an appeal, and the Supreme Court affirmed the decision of the lower court, speaking as follows:

No parent has the right to demand that the interests of the children of others shall be sacrificed for the interests of his child; and he cannot, consequently, insist that his child shall be placed or kept in particular classes, when by so doing others will be retarded in the advancement they would otherwise make; or that his child shall be taught studies not in the prescribed course of the school, or be allowed to use a text-book different from that decided to be used in the school, or that he shall be allowed to adopt methods of study that interfere with others in their study. * * The policy of our law has ever been to recognize the right of the parent to determine to what extent his child shall be educated during minority, presuming that his natural affections and superior opportunities of knowing the physical and mental capabilities and future prospects of his child will insure the adoption of that course which will most effectually promote the child's welfare. The policy of the school law is only to withdraw from the parent the right to select the branches to be studied by the child to the extent that the exercise of that right would interfere with the system of

instruction prescribed for the school, and its efficiency in imparting education to all entitled to share in its benefits. No particular branch of study is compulsory upon those who attend school (Ill.[18]).

In the same State, a young lady was expelled from a public school because, under the direction of her parents, she refused to study book-keeping. She instituted an action of trespass against the directors and principal of the school, and on trial in the court below the jury found a verdict in her favor, and assessed the damages at $136. On appeal it was affirmed by the court.

A statute which enumerates the branches that teachers shall be qualified to teach, gives all the children in the State the right to be instructed in those branches. But neither teachers nor directors have power to compel pupils to study other branches, nor to expel a pupil for refusing to study them (Ill.[17]).

Even in New York a test case has been decided in accordance with the rulings just given.

Carl Hallet, a pupil in the Union Free School at Riverhead, refused to declaim, following in the matter his father's directions. He was expelled from school, and action was brought against the principal and Board of Education before the Supreme Court, April 26, 1877. In his charge to the jury, C. E. Pratt, Justice, spoke as follows:

In my private opinion this requirement upon the part of these trustees and of this teacher was a perfectly reasonable one, and one which they should have been permitted to enforce. I may say further, and I think you will all agree with me, that it is utterly useless to attempt to conduct a public school unless there is secured by certain rules and regulations a thorough discipline; and more particularly is it necessary that it should be understood by those who partake of the benefits of the system, that the rules, whatever they may be, are to be impartially and invariably enforced.

In thus stating my private opinion, however, I would impress upon your minds the fact that it is immaterial what may be your or my personal feeling upon any matter of this kind. We are bound to accept the law as we find it. If the law is wrong it is not for you to rectify it. There is no safety in the administration of justice unless the laws are strictly carried out. In this case I am confident there are members upon this jury who, controlled as they are by feelings of regard for the common school system, and knowing as they do the necessity of upholding the hands of those who have the schools in charge, would hesitate for a long time before rendering any verdict against the defendants, however clear the law might be, if any excuse

could be found which would satisfy their consciences in thus withholding it. Hence, in order that this question may be determined, I propose to relieve you from any responsibility in deciding the main issues in this case by saying to you that you must find a verdict for the plaintiff; and the only question which I propose to submit to you is that of damages. And while stating to you, as I have done, my private opinion and feeling upon this subject, I must at the same time say, that from reading the decisions of courts in other States upon laws the provisions of which are similar to those under which this school in question was established and is regulated, I feel constrained to say that there must, upon the facts of this case, be technically a verdict for the plaintiff.

In explanation it is perhaps proper that I should state that the rule of law is that this board of trustees may designate a course of study, within the authority delegated to them by statute, and that they may also prescribe the text-books to be used in pursuing this course of study. And you see the necessity of this. It would be utterly impossible to conduct any school if every parent should undertake to dictate as to the character of the text-book to be used by the scholar. Take a school of two or three hundred scholars and as many different kinds of text-books, and you would have about as many classes as students; and hence the school could not be classified at all, and the great object in view, that is, the public benefit which is to be obtained from the grouping together of children and educating them at the public expense—would be utterly lost. The law has therefore provided that these trustees shall have a wide discretion in making rules, not only for the government and discipline of the school while it is in session, but also that they may regulate the various classifications and gradations, and designate text-books that shall be used in the schools.

But here comes the question whether, in addition to the course of study prescribed by statute, the trustees shall be permitted to say that a child shall pursue a study which the parent, who is the guardian and has the control, nurture, and education of the child, desires that the child shall not pursue. *I am constrained to hold the law to be that where there is an irreconcilable difference of opinion between the teacher, or the board of trustees, and the parent, in regard to a study which is not included among those that the trustees are empowered to prescribe, the will of the parent must control.* I think that the law has not taken away the natural right of the parent to control the education of the child in that regard; and the parent is presumed to know the capacity, the temperament, and the qualifications of the child, and his ability to take any particular study or not. When the teacher or the trustees undertake to say that a child shall pursue a particular study which is not included in the statutory list of studies I think they exceed their authority. And when that is made the basis of an attempt to deprive the child of its right to attend school, and enjoy the benefits which arise from the laying of a common burden upon the community, I hold that they are liable, technically liable, for the act. Of course the parent cannot dictate that the child shall take a study which is not included in the regular, prescribed list. This

duty, this obligation, is reciprocal. The parent cannot say that the child shall study any branch not prescribed, nor can the school authorities insist that the child shall pursue a study not in the prescribed list against the will of the parent.

3. MODERN TENDENCY OF OPINION.—It will be observed that this decision applies only to studies *not prescribed in the statute.* But as it plainly follows the rulings of the Western courts, we close with a quotation from the Wisconsin decision already referred to.

In our opinion, there is a great and fatal error in this part of the charge, in asserting or assuming the law to be that, upon an irreconcilable difference of views between the parents and teachers as to what studies the child shall pursue, the authority of the teacher is paramount and controlling. We do not understand that there is any recognized principle of law, nor do we think there is any recognized rule of moral or social usage, which gives the teacher an absolute right to prescribe and dictate what studies the child shall pursue, regardless of the views or wishes of the parents. From what source does the teacher derive this authority? Ordinarily, it will be conceded, the law gives the parent the exclusive right to govern and control the conduct of his minor children; it is one of the earliest and most sacred duties taught the child to know and obey its parents. The situation is truly lamentable, if the condition of the law is that he is liable to be punished by the parent for disobeying his orders in regard to his studies, and the teacher may lawfully chastise him for not disobeying his parents in that particular (Wis.[11]).

CHAPTER VII.

THE BIBLE AND RELIGIOUS EXERCISES.

1. The Law in New York.—In New York the decisions of the State Department have uniformly denied the right to insist upon religious exercises of any kind.

In the year 1853, Margaret Gifford, a common-school teacher in South Easton, Washington County, ordered William Callaghan, a pupil aged twelve years, "to study and read the Protestant Testament." He declined to do so, on the ground "that he was a Catholic, and did not believe in any but a Catholic Bible." The teacher consulted the trustees on the subject, and on the next day again required the boy to read out of the King James Bible. The boy declared "his unwillingness to disobey the orders of his parents and violate the precepts of his religion," whereupon the teacher "chastised him severely with her ferule and then expelled him ignominiously from the school."

An appeal was taken to Henry S. Randall, then Superintendent of Common schools, who quoted and endorsed the following opinion of his predecessor, John C. Spencer:

> Prayers cannot form any part of the school exercises, or be regulated by the school discipline. If had at all, they should be had before the hour of nine o'clock, the usual hour for commencing school in the morning, and after five in the afternoon. If any parents are desirous of habituating their children to the practice of thanking their Creator for his protection during the night, and invoking his blessings on the labors of the day, they have a right to place them under the charge of the teacher for that purpose. But neither they nor the teacher have any authority to compel the children of other parents who object to the practice from dislike of the individual or his creed, or from any other cause, to unite in such prayers. And, on the other hand, the latter have no right to obstruct the former, in the discharge of what they deem a sacred duty. Both parties have rights; and it is only by a mutual and reciprocal regard by each to the rights of the other that peace can be maintained or a school can flourish. The teacher may assemble

in his room before nine o'clock the children of those parents who desire him to conduct their religious exercises for them; and the children of those who object to the practice will be allowed to retire or absent themselves from the room. If they persist in remaining there, they must conduct with the decorum and propriety becoming the occasion. If they do not so conduct, they may be dealt with as intruders (N. Y.[50]).

Superintendent Randall, after stating that this is the first instance in which an appeal in regard to the reading of the Bible has been brought before the Department, then goes on to discuss the general question of the connection of intellectual and religious instruction, and concludes as follows:

"I believe that the Holy Scriptures, and especially that portion of them known as the New Testament, are proper to be read in schools by pupils who have attained sufficient literary and mental culture to understand their import. I believe they may, as a matter of right, be read as a class book by those whose parents desire it. But I am clearly of the opinion that the reading of no version of them can be forced on those whose consciences and religion object to such version.

Assuming the facts stated in the complaint to be true, I consider the conduct of the teacher, Margaret Gifford, to be not only unwarrantable but barbarous. That she should not only 'ignominiously expel' the pupil, but that she should gratuitously inflict a preliminary castigation on a child of tender years, who plead the 'commands of his parents and the precepts of his religion' against the obeyal of her orders, betrays feelings as unusual to her sex as repugnant to the mild precepts of that Gospel which, I trust, with honest though certainly with mistaken zeal, she was attempting to uphold. Perhaps she deserves a lesser measure of reprehension if she acted, as would appear, though it is not expressly stated, under direction of the trustees. But neither the trustees, the majority of the people of the district, the town superintendent, nor all of these united, would have power to authorize such an outrage" (N. Y.[51]).

In accordance with this decision, it has been uniformly ruled that pupils cannot be compelled to attend religious services (N. Y.[52]), and that the law gives no authority, as a matter of right, to use any portion of the regular school hours in conducting any religious exercises at which the attendance of pupils is made compulsory (N. Y.[53]).

Some places, like the cities of Troy and Rochester, have forbidden any religious exercises. But in most communities in this

State, opening the school with Bible-reading and some form of prayer is considered unobjectionable and desirable.

It is the rule of the State Department never to interfere in this matter unless some one in the community feels sufficiently aggrieved to appeal to the State Superintendent, in which case the law forbidding religious exercises, in school hours is immediately enforced.

The practice of the Department is the same with regard to the drawing of public money by Catholic schools. In some cities and villages, schools conducted by Sisters wearing the usual garb of their order are admitted under the public school system, the teachers being examined by local officers, and drawing pay from the public funds. This the Superintendent permits except where his attention is officially called to it by regular appeal, in which case he is obliged to decide that such are not properly public schools and cannot participate in the public money.

2. In Other States usage varies.

In Massachusetts, the law directs the committee to require the daily reading of the Bible, "but they shall require no scholar to read from any particular version, whose parent or guardian shall declare that he has conscientious scruples against allowing him to read therefrom" (Mass.[26]).

In Maine, a requirement by the superintending school-committee, that the Protestant version of the Bible shall be read in public schools of their town by scholars who are able to read, is not in violation of any constitutional provision, and is binding upon the members of the school, although composed of divers religious sects (Me.[10]).

In New Jersey, the school money is appropriated to public schools, *provided* that it shall not be lawful for any teacher, trustee, or trustees to introduce into or have performed in any school receiving its proportion of public money, any religious service, ceremony, or forms whatsoever, except reading the Bible and repeating the Lord's Prayer (N. J.[2]).

In Illinois, Judge Pillsbury has decided that the directors have a right to dictate what books shall be studied and used, and can, therefore, order the Bible to be read as a text-book in con-

nection with other studies. This decision was rendered in a suit brought by a Roman Catholic, who had instructed his son to pay no attention while the Bible was read in school, but to go on studying his lessons. The lad was expelled, and the action of the school-mistress was justified both by the trustees and by the court (Ill.[20]).

In Indiana, "the statute does not require, even by implication, that there shall be any devotional exercises or religious instruction in the schools, nor does it prohibit it. The legislature, in the revision of the statutes of 1852, made provision for the reading of the Scriptures, in case it is desired, in any of the common schools; and it has been so far acquiesced in by the people, that no question in regard to it has, as yet, come before the Supreme Court" (Ind.[9]).

In Kentucky, the statute neither prescribes nor prohibits. "Therefore, if nothing sectarian is introduced, religious exercises are permissible" (Ky.[12]).

In Iowa, "neither the electors, the board of directors, nor the sub-directors can exclude the Bible from any school in the State" (Ia.[11]).

In Missouri, the directors may compel the reading of the Bible (Mo.[8])

In Dakota, the Bible may be read in school not to exceed ten minutes daily, without sectarian comment (Dak.[3]).

In 1869 the Cincinnati Board of Education forbade the reading of the Bible in the public schools of that city. An appeal was taken to the courts, and in 1870 the Superior Court of Cincinnati decided against the Board of Education. In 1873, the Supreme Court of Ohio reversed this judgment and sustained the Board of Education (O.[7]).

In 1875, the School Board of Chicago followed the example of Cincinnati (Ill.[21]), and forbade the reading of the Bible in the public schools. In 1878 the School Board of New Haven took similar action.

CHAPTER VIII.

SUSPENSION AND EXPULSION.

1. WHAT THE TEACHER MAY REQUIRE OF THE PUPIL.—It is a common custom to draw up, print, and conspicuously post a long series of regulations for the conduct of pupils in the school-house and about the grounds, the practical effect of which is to suggest to them many forms of mischief which their unaided ingenuity would never devise.

So far as these regulations pertain to the necessary discipline of the school, the authority is in the hands of the teacher, and though the methods employed by him do not please the trustees, the teacher cannot be removed except for incompetence or cruelty (405).

a. Janitor Work.—Compare page 38.

In Iowa, the general pinciple is thus laid down:

> Any rule of the school, not subversive of the rights of the children or parents, or in conflict with humanity and the precepts of divine law, which tends to advance the object of the law in establishing public schools, must be considered reasonable and proper (Ia.[7]).

The teacher cannot, however, *compel* pupils to do any janitorial work, like building fires, or sweeping the school-house (Ill.[15] Ia.[13] R. I.[2] Wis.[20] Mo.[4] etc).

> In 1856, Judge Cutting, of the Supreme Court in Maine decided that a boy attending school might be required by the teacher to build the fire at the school-house his proportion of the time, and

sustained the teacher for flogging a boy because he refused to make a fire (Me.[11]). But this decision stands alone, and is not good law (Mass.[26]).

"A child who wantonly carries dirt into the school-room, or litters paper over the floor, may be required to gather up such refuse as has been scattered. But this is as a punishment. It may be very desirable, under certain circumstances, to have such work done to save money; but no court will sustain a board in suspending a pupil for refusal to do the work thus required" (Ill.[15], Ia.[13], Ky.[6]).

b. Pecuniary Fines.—The law confers upon trustees no power to inflict pecuniary fines (N. Y.[54], Wis.[19]) even for injury to school property (*433*, Ia[12]).

The law of New Jersey, however, provides for suspension as penalty for damage to school property.

c. Tardy Pupils should not be kept in the entry or outside the building especially in cold weather (N. Y.[49]; compare page 52).

2. For what Pupils may be Expelled.—The right to attend school is not absolute, but is conditional upon compliance with the rules and regulations of the school (Vt.[20]). The parent has no right to interfere with the order of the school or the progress of other pupils by sending his own child at times, and in condition or under restrictions that will prove an annoyance and hindrance to others (Ia.[14]).

a. The Teacher may Suspend.—Accordingly there is vested in the teacher the right to suspend, and in the trustees the right to expel pupils from school.

Judge Vincent ruled that, though the authority to suspend or expel pupils from school is vested in the board of directors, the teacher has the right to exclude a refractory pupil temporarily from school. He said:

We have long held the opinion that the right to exclude a pupil temporarily from school was, in the absence of law to the contrary, inherent in the

teacher's office, and that the exercise of this right under some circumstances is a necessity (O.[8]).

This view is strongly held in Wis.[13] Mass.[27,28]. See also Vt.[19], Cal.[3].

It has even been held that "The master may expel a scholar when in his judgment the good order and proper government of the school requires it, and if he errs in good faith in the discharge of his duty he is not liable to action therefor" (Vt.[21]). But it is generally understood that the power of the teacher extends only to temporary suspension, that the matter must be immediately brought before the trustees, and the trustees alone have the power to continue the suspension or to convert it into expulsion. In New Jersey, the statute directly provides that the teacher may "suspend from school any pupil for good cause" (N. J.[3]).

"If the offender is incorrigible, suspension or expulsion is the only adequate remedy. In general, no doubt, the teacher should report a case of that kind to the proper board for its action in the first instance, if no delay will necessarily result from that course prejudicial to the best interests of the school. But the conduct of the recusant pupil may be such that his presence in the school for a day or an hour may be disastrous to the discipline of the school, and even to the morals of the other pupils. In such a case it seems absolutely essential to the welfare of the school that the teacher should have the power to suspend the offender at once from the privileges of the school; and he must necessarily decide for himself whether the case requires that remedy."

b. The Trustees may Expel.—The law has been well stated as follows:

"No pupil can be expelled from the public schools for a frivolous or light or trivial cause. The teacher possesses the power and has the right to *coerce* obedience to the rules of school by proper and reasonable punishment, if it can be done, before the pupil is expelled from school. It is only when reasonable means or punishment of the refractory scholar have failed to induce obedience that he can be justified in expelling such scholar. If, however, a scholar *persists* in disobeying the teacher, after proper admonition or punishment, to such extent as to justify the belief

that the course of disobedience will be continued, then the trustees will be justified in expelling the scholar" (Ky.[13]).

In Rhode Island, the committee may suspend during pleasure all pupils found guilty of "incorrigibly bad conduct or of violation of the school regulations" (R. I.[3]).

In California, "continued wilful disobedience or open defiance of the authority of the teacher constitutes good cause for expulsion, and habitual profanity or vulgarity good cause for suspension" (Cal.[4]).

In Maine, the committee may "expel from school any obstinately disobedient and disorderly scholar, after a proper investigation of his behavior, if found necessary for the peace and usefulness of the school" (Me.[12]).

In Massachusetts, "the school committee has authority, not subject to revision if exercised in good faith, to exclude a pupil from a public school for misconduct which injures its discipline and management" (Mass.[19 29]).

In Wisconsin, "a pupil can be expelled where no rules have been made, when flagrant misconduct or gross immorality renders it necessary for the good of the school" (Wis.[21]).

In Iowa, "the law does not require a notice to parents of the intention to expel a pupil, or an opportunity for explanation or defence. The board has large discretionary power. This is one of the matters under their direction" (Ia.[15]).

In Minnesota, pupils may be suspended or expelled "for insubordination, immorality, or infectious disease" (Minn.[4]).

Trustees may expel pupils for open, gross immorality manifested by any licentious propensities, language, manners, or habits, though not manifested by acts of licentiousness or immorality within the school (Mass.[29]), or for such violent insubordination against reasonable and proper regulations of the school as to render it impossible to maintain necessary discipline and order (132), or when in their judgment the good order and proper government of the school demands it (N. Y.[55]).

If trustees will not expel them, a teacher may refuse to instruct large boys who treat her disrespectfully and refuse proper obedience. "A female cannot be expected to control large boys by physical force" (N. Y.[56]).

A boy expelled for impertinence should be readmitted if he apologizes (N. Y.[57]), compare page 73; and cannot be required to apologize upon his knees (N. Y.[58]).

"Pupils who go to school without proper attention to cleanliness or neatness shall be sent home to be properly prepared for school" (Cal.[5]).

In most States pupils may be refused admission whose parents fail to provide them with the proper text-books for their classes. All States make provision for supplying text-books to children whose parents are unable to purchase them.

3. EXPULSION IS ONLY FROM SCHOOL.—It is not in the line of duty for trustees to refuse a person expelled from a school the quiet enjoyment of an exhibition held by a literary society of a school in the school building. In charging the jury in such a case, the Judge remarked:

To say that a student expelled from a school for disobedience to some municipal regulation should be excluded from attending a prayer meeting or public lecture in the school-house or college premises for all time to come, without any evidence of improper conduct or suspicion of improper purposes, would be an exercise of tyranny over his private rights not vested in the trustees, directors, or professors of our educational institutions (Pa.[5]).

4. HOW TO ENFORCE EXPULSION.—If a pupil who has been suspended or expelled refuses to leave the building, a New York teacher or trustee may at once enter a complaint before any justice of the peace or city magistrate under the following provision:

Any person who shall wilfully disturb, interrupt, or disquiet any district school or school meeting in session....shall forfeit twenty-five dollars for the benefit of the school district (234; compare Wis.[22] Me.[13] Ind.[10] Cal.[6] N. J.[4]).

5. How long should Expulsion Continue? — This may be inferred from several illustrative decisions.

a. A New York Decision.—On April 8, 1874, L. H. Hanchett was suspended from the Union School at Phoenix, N. Y., "for disrespectful conduct and language towards his teacher," and the board refused to restore him until he should make apology. He refused to make such apology, on the ground that he had been unjustly dealt with in reference to a certain examination, and more than a year afterwards he appealed to the State Superintendent to be readmitted to the school without apology. The Superintendent's decision reads as follows:

> The language of the appellant to his teacher was such as no provocation would ever justify a gentleman in using toward a lady, as the teacher is; and the appellant's own sense of self-respect and of what under the circumstances was due from him to his teacher should have led him to make the apology of his own free-will, without a demand for it from the board in behalf of the offended party. But it appears that the appellant persistently refuses to do not only the teacher but himself justice in the matter, for in view of the offence committed, making at least the reparation of an apology for the language used, was, in my opinion, an act of justice even to himself, which he should have been not only willing but eager to perform. But in view of the fact that the appellant has already been kept from the privileges of the school for more than a year, and that such a suspension may be well deemed a sufficient punishment for the offence, committed as it probably was under unusual excitement and by a scholar of uniform previous good conduct, the appeal is, I must admit with considerable reluctance, sustained, and the respondents are directed to restore the appellant to the privileges of the school, on presenting himself for that purpose (N. Y.[59]).

The principle here affirmed is that when the suspension has been continued long enough to be a sufficient

punishment, the scholar must be received without acknowledgment of the wrong committed.

b. The Usual View.—This is not the view commonly held. In Maine, the statute directs the committee to restore the pupil "on satisfactory evidence of his repentance and amendment" (Me.[14]).

c. A Rhode Island Decision.—In Rhode Island the principle involved has been clearly stated. On March 9, 1870, a scholar named Fuller resisted the authority of J. R. Davenport, principal of the Woonsocket High School. The teacher suspended him. The committee justified the teacher in the suspension, but voted to restore the boy unconditionally. The teacher appealed from the committee to the State Commissioner of Public Schools, who rendered the following decision:

> In the case of Master Fuller, no punishment has as yet been inflicted for the offence committed, save that indirectly following the publicity of suspension from school; and so far as the vote of the committee extends, there has been no requirement made which secures to the governing power of the school a recognition of the violation of law, or a proper pledge of future obedience. If the scholar so disobeying be allowed to return to the schoolroom without such acknowledgment of wrong, or a promise of future obedience, the discipline of the school would instantly be degraded to the position occupied by the offender, and to a state of discord in harmony with the offence. On the other hand, the recognition, on the part of the offender, of the offence committed, as well as an acknowledgment of the authority of the teacher to regulate the internal police of his school, with a pledge of future obedience, not only honors proper and legitimate government and establishes it upon a proper basis, but it also honors the instinctive regard for truth, virtue, and correct deportment on the part of those who may have fallen into a fault, perhaps hastily and thoughtlessly.

Upon this view of the case stands the whole question of good government and discipline at home or at school. If the parent or teacher be at once deprived of the power of judging of the value of an offence, from its intrinsic character and its attendant circumstances, and also of the power to administer merited punishment for offences, as well as of the granting of pardon and forgiveness on the ground of true reformation, the whole foundation and superstructure of disciplinary government are thrown down, and misrule must and will prevail.

The wise and judicious teacher is jealous of his true rights and prerogatives, and is the best judge as to the influences of the school room, which help on the one hand to maintain, and on the other to subvert, good government. The look and the gesture may mean more of good or ill than the word and the act; and it would not tend to the welfare of our schools, or to the support and dignity of home or school government, to subject every act of the teacher or the parent to the severe tests of legal scrutiny, or the partisan attacks of interested counsellors. In view, therefore, of the general application of the vote passed by the school committee of Woonsocket, by which said committee decided to admit Master Fuller to regular standing in the high school, and in view of its specific application to the school of which he was a member, as well as its practical influence upon all the schools of the town, if carried out, I am forced to the conclusion that it would not be for the welfare of the schools to allow this vote to be carried into effect, and I therefore declare said vote to be null and void (R. I.[4]).

6. No Damages for Expulsion in good Faith.—Trustees are not liable for damages for expelling a pupil, even though the rule be unwarrantably severe, provided they act in good faith (Vt.[22]).

To recover damages, the person must first appeal to school officers who have the power to reinstate him, if there be such (Mass.[28]), and prove the action of the officers excluding him to have been wanton and malicious (Ill.[21]).

In Missouri, it was decided that when trustees had expelled a pupil for attending a social evening party in violation of a rule

of the school, no suit for damages could be sustained. The Court said:

Whether the rule was a wise one or not, the directors and teachers are not liable to an action for damages for enforcing it, even to the expulsion of the pupil who violates it. While this Court might, on *mandamus* to compel the Board and teacher to admit a pupil thus expelled, review the action of the board and pass upon the unreasonableness of the rule—which we do not, however, decide here—yet the doctrine that the courts can do this is very different from that which would hold the directors liable in an action for damages for enforcing a rule honestly adopted for the maintenance of discipline in the school. That such an action is not maintainable is fully established by Mo.[9] Mass.[20] NY.[60]. See also Mo.[10]; 11 Johns. 114; 1 East. 555; Me.[12] Neb.[6] Pa.[4] Ind.[11] Ia.[16] Ill.[21,14] O. [9]. But see also O.[10] Cal.[7] N. Y.[61-63] N.H.[5] Conn.[4] Mo.[11] 1 Denio, 599; 3 Denio, 117.

Judges Norton, Napton, Hough, and Sherwood concurred in the following view:

It certainly could not have been the design of the Legislature to take from the parent the control of his child while not at school, and invest it in a board of directors or teacher of a school. If they can prescribe a rule which denies to the parent the right to allow his child to attend a social gathering, except upon pain of expulsion from a school which the law gives him a right to attend, may they not prescribe a rule which would forbid the parent from allowing the child to attend a particular church, or any church at all, and thus step *in loco parentis* and supersede entirely parental authority? The directors, in prescribing the rule that scholars who attended a social party should be expelled from school, went beyond their power, and invaded the right of the parent to govern the conduct of his child, when solely under his charge. My concurrence in the opinion of the court is based upon the sole ground that malice, oppression, and wilfulness on the part of the defendants are not sufficiently charged in the petition (Mo.[10]).

CHAPTER IX.

THE TEACHER AND THE PARENT.

EXCEPT as to the power of compelling the pupil to attend school punctually upon all school-days (see Chapter V.), and to take all the studies pursued by a certain class (see Chapter VI.), the relation of the teacher's authority to that of the parents may be considered definitely established.

1. DERIVATION OF AUTHORITY.—The teacher does not derive his authority from the parents. He holds a public office created by the law. He is legally responsible only to the trustees who hire him. Between the teacher and the child the parent can personally interfere only by removing the child from the school (N. Y.[64] Me.[15] Vt.[19] O.[11] Wis.[13]).

2. THE SCHOOLMASTER'S CASTLE.—The school-house is the schoolmaster's castle. Upon this point the following forcible statement is fully warranted:

> This old maxim of English law (5 Rep. 92), is as applicable to the schoolmaster as to any other person who is in the lawful possession of a house. It is true that the school officers, as such, have certain rights in the school-house; but the law will not allow even them to interfere with the teacher while he keeps strictly within the line of his duty. Having been legally put in possession, he can hold it for the purposes and the time agreed upon; and no parent, not even the Governor of the State nor the President of the United States, has any right to enter it and disturb him in the law-

ful performance of his duties. If persons do so enter, he should order them out; and if they do not go, on being requested to do so, he may use such force as is necessary to eject them. And if he finds that he is unable to put them out himself, he may call on others to assist him, and if no more force is employed than is actually necessary to remove the intruder, the law will justify the teacher's act and the acts of those who assisted him (27 Maine, 256; 1 City Hall Rec. 55; 2 Met 23; 6 Barbour, 608; 8 T. R. 299; 2 Ro. Abr. 548; 2 Selk. 641; 1 C. & P. 6; 8 T. R. 78; Wharton's Am. Criminal Law, 1256)—*The Lawyer in the School-room*, 1871, p. 120.

Protection by Law. — The teacher's best defence against querulous or insulting visits of parents to the school-room is found in that provision of the statute already once quoted (see page 72).

Any person who shall wilfully disturb, interrupt, or disquiet any district school . . . shall forfeit twenty-five dollars for the benefit of the school district.

It shall be the duty of the trustees of the district, or the teacher of the school, and he shall have the power to enter a complaint against such offender before any justice of the peace of the county. . . . The magistrate . . . shall thereupon . . . cause the person to be arrested and brought before him for trial.

The efficacy of this remedy against disturbance in the school-room should be more generally understood by teachers. The law is explicit, and any justice of the peace is *obliged* upon complaint of the teacher to bring the guilty party to trial.

3. On the Road to and from School.—In regard to what transpires by the way in going to and returning from school, the authority of the teacher is regarded in most States as concurrent with that of the parent.

The decisions of the State Superintendents of New York have followed the precedent established in the following paragraph in

a Digest of the Common School System of the State, S. S. Randall, 1844, p. 262:

> The authority of the teacher to punish his scholars extends to acts done in the school-room or playground only; and he has no legal right to punish for improper or disorderly conduct elsewhere.—*Per Spencer, Sup't.*

Thus Sup't Gilmour ruled:

> I am aware of the existence of no law under which trustees or teachers have the right to regulate the conduct of scholars out of school hours and when away from the school (*425*).

Sup't Ruggles wrote Jan. 31, 1885:

> It has been held by this Department, that a teacher's authority over pupils ceases after the close of school and when they retire from the school grounds (*School Bulletin*, Feb., 1886, p. 62).

Sup't Draper has expressed to the author the same opinion.

But this is not sustained by legal decisions in any other State (Vt.[23] Ia.[7] Mass.[29]; but see Mass.[30] Ia.[17] Mo.[10]). The laws of California, Kentucky, New Jersey, and Virginia distinctly confer upon the teacher power to hold the pupil accountable for his conduct on the way to and from school, and the general law upon this subject is well summed up by Superintendent Briggs, of Michigan, in the *The School Laws of Michigan*, 1873, pp. 204–206. The additional references are ours.

a. In the School-room, Absolute.—In the school-room the teacher has the exclusive control and supervision of his pupils, subject only to such regulations and directions as may be prescribed or given by the school board.

b. On the Playground, Absolute.—The conduct of the pupils upon any part of the premises connected with the school-house or in the immediate vicinity of the same (the pupils being thus virtually under the care and oversight of the teacher), whether within the regular school hours or before or after them, is properly cognizable by the teacher. And any disturbance made by them within this range, injuriously affecting in any way the interests of the school, may clearly be the subject of reproof and correction by the teacher:

c. On the Road, Concurrent.—In regard to what transpires by the way in going to and returning from school, the authority of the teacher may be regarded as concurrent with that of the parent.

So far as offences are concerned for which the pupils committing them would be answerable to the laws, such as larceny, trespasses, etc., which come particularly within the category of crimes against the State, it is the wisest course generally for the teacher (whatever be his legal power*), to let the offender pass into the hands of judicial or parental authority, and thus avoid being involved in controversies with parents and others, and exposing himself to the liability of being harassed by prosecution at law.

But as to any misdemeanors of which the pupils are guilty in passing from the school-house to their homes, which directly and injuriously affect the good order and government of the school, and the right training of scholars, such as truancy, wilful tardiness, quarrelling with other children, the use of indecent and profane language, etc., there can be no doubt that these come within the jurisdiction of the teacher, and are properly matters for discipline in the school.

A recent decision of the Supreme Court of Vermont illustrates and fully accords with the foregoing positions. The Court decided that such misdemeanors have a direct and immediate tendency to injure the school by subverting the teacher's authority, and begetting disorder and insubordination among the pupils. The same doctrine is substantially recognized by the Supreme Courts in some other States. . . . The governing principle in all cases like the Vermont case is that *whatever in the misconduct of pupils under like circumstances, as to time and place, etc., has a direct tendency to injure the school in its important interests, is properly a subject of discipline in the school.*

It is sometimes objected to the foregoing views that the responsibilities of teachers are in this way enlarged to an improper

* The teacher cannot punish a pupil for refusing to confess a crime for which he might be punished at law.—*Public School Acts of Rhode Island*, 1857, p. 53.

extent; that if their authority extends beyond the school-house limits and the school hours, their responsibilities must be increased in a corresponding ratio. But to this it may be answered, that the matter is to have a reasonable construction; that it cannot be expected that a teacher will follow his pupils into the streets to watch their conduct when beyond his view and inspection; the extent of his duty in this respect can be only to take cognizance of such misconduct of his pupils, under the supposed circumstances, as may come to his knowledge incidentally, either through his own observation or other proper means of information.

The view that acts, to be within authority of the school-board and teachers for discipline and correction must be done within school hours, is narrow and without regard to the spirit of the law and the best interest of common schools (Ia.[14]).

Specific Enactments.—The rules and regulations of the public schools of Kentucky say: "The pupils of the school are under the authority of their teachers while in school and while going to and from school" (Ky.[9]), but "it is not to be inferred by this that the teacher is to be held responsible for such misconduct, or *must* punish it" (Ky.[13]).

The regulations of California state: "It is expected that teachers will exercise a general inspection over the conduct of scholars going to and returning from school" (Cal.[8]).

In Indiana, "school teachers and trustees cease to have control over pupils when they reach home after dismissal from school. On the road they have control. They cannot compel pupils to study at home or anywhere except at school" (Ind.[12]).

In New Jersey, the law provides that "every teacher shall have power to hold every pupil accountable in school for any disorderly conduct on the way to and from school, or on the playgrounds of the school, or during recess, and to suspend from school any pupil for good cause" (N. J.[3]).

In Massachusetts, it was held that Charlotte A. Sherman was rightly expelled for acts of immorality and licentiousness committed out of school (Mass.[17]).

In Iowa, "if the effects of actions done outside of school reach within the school during school hours, they may be justly forbidden" (Ia.[18]); but it was held that a boy could not be expelled for publishing a newspaper article ridiculing the school directors (Ia.[17]).

In Iowa, "that the teacher and parents have *joint control* over children on their way to and from school is a well-recognized principle. The teacher ought to secure the co-operation of the parent in such matters, if possible, to avoid the continual friction caused by this joint control" (Ia.[19]).

In Missouri, however, the Superintendent decides: "If the parent will not co-operate with the board or teacher (the board's agent) by watching over and controlling the child *out of school hours, and off the school premises* (when and where the board *cannot* exercise direct control or legal power), and such neglect of the parent works to the injury of school discipline or order, the board may expel the pupil" (Mo.[12]). But in another case, the Court decided that school-directors exceeded their authority in expelling a boy for attending an evening party (Mo.[10]).

In Rhode Island, "the power to punish for offences out of school is doubtful" (R. I.[5]).

Inspector Willm, of the Academy at Strasbourg, gave as the French interpretation of the law: "The road leading to the school is truly a part of it, if we may so speak, as well as the playground. Consequently any disorders committed by the pupils on it ought to be suppressed" (France[1]).

The Vermont case referred to by Superintendent Briggs was as follows. The defendant was the teacher of a district school in Burlington, and the plaintiff was a scholar eleven years old. One afternoon, an hour and a half after the close of school, after the boy had returned home from school, and while he was doing an errand for his father, the boy called the teacher "*Old Jack Seaver,*" in the presence of other scholars of the school. The next morning, after school had opened, the teacher whipped the boy with a rawhide, and the court sustained him (Vt.[24]).

Horace Mann's Opinion.—Horace Mann thus laid down the law which may be considered as still prevailing:

On the one hand, there is certainly some limit to the jurisdiction of the committee and teachers, out of school hours and out of the school-house; and, on the other hand, it is equally plain, if their jurisdiction does not commence until the minute for opening school has arrived, nor until the pupil has passed within the door of the school-room, that all the authority left to them in regard to some of the most sacred objects for which our schools were instituted would be of little avail. To what purpose would the teacher prohibit profane or obscene language among his scholars, within the school-room and during school hours, if they could indulge in it with impunity and to any extent of wantonness as soon as the hour for dismissing school should arrive? To what purpose would he forbid quarrelling and fighting among the scholars, at recess, if they could engage in single combat or marshal themselves into hostile parties for a general encounter within the precincts of the school-house, within the next five minutes after the school-house should be closed? And to what purpose would he repress insolence to himself, if a scholar, as soon as he had passed the threshold, might shake his fist in his teacher's face, and challenge him to personal combat? These considerations would seem to show that there must be a portion of time, both before the school commences and after it has closed, and also a portion of space between the door of the school-house and that of the parental mansion, where the jurisdiction of the parent on one side and of the committee and teachers on the other is concurrent (Mass.[31]).

d. Punishment Inflicted only on School Premises.— Punishment even for offences out of school must, however, be inflicted only on the school premises.

In 1859, a teacher in Bedford, Ind., named Ariel Flynn, punished a boy on his way home from school for an act which the teacher saw him commit at that time. The Court instructed the jury that although the defendant as a teacher was by law vested with the delegated authority to exercise control over the boy as his pupil during school hours, yet after the adjournment of his school, and after the boy had left him and was on his way home, his authority over him had terminated, and his act of administering

correction under the circumstances was unauthorized by law (Ind.[13]).

4. Detention after School.—Teachers may, at their discretion, detain scholars a reasonable time after the regular school hours, for reasons connected with the discipline, order, or instruction of the school.

This practice has been sanctioned by general and immemorial usage among the schools, and by the authority and consent of school boards, expressed or implied, and has been found useful in its influence and results. There is no law defining precisely *school hours*, as they are termed, or the hours within which schools are to be kept. This is regulated by usage, or by the directions of school boards, varying in different localities, and also in different seasons of the year. The practice under consideration, of occasionally detaining pupils after the regular school hours for objects connected with the school arrangements, rests upon precisely the same authority. The same superintending power that regulates the one, does the same thing in the other; yet the right in question should always be exercised by teachers with proper caution and a due regard to the wishes and convenience of parents (Mich.[4]).

In California, the regulations provide that "no pupil shall be detained in school during the intermission at noon, and a pupil detained at any recess shall be permitted to go out immediately thereafter. All pupils except those detained for punishment *shall be required* to pass out of the school-room at recess, unless it would occasion an exposure of health" (Cal.[9]).

5. The Use of Tobacco.—Sup't Ruggles, of New York, wrote, Dec. 31st, 1885:

I think you have good right, if authorized by trustees, to discipline scholars *for using tobacco in the school*, for irregular attendance, for bad conduct, or for refusing to make good damages done to school property (*School Bulletin*, Feb., 1886, p. 62). [On this last point see page 69.]

Sup't Morrison wrote, in January, 1886:

I am of the opinion that the teacher has a right to forbid the use of tobacco by pupils on the school grounds (*same reference*).

6. DIGNITY OF THE TEACHER'S OFFICE.—This subject of the relation of teachers to parents we have treated at considerable length, because it is commonly misunderstood. The teacher should feel that he is not a hired servant of the individual inhabitants of the district, to be criticised and thwarted, and at the best but tolerated. He has legal rights, and no inconsiderable legal authority. He should deserve and demand the respect due the dignity of his office. "Pull off thy hat, Sire," said the schoolmaster to Charles II., "for if my scholars discover that the king is above me in authority here, they will soon cease to respect me."

CHAPTER X.

CORPORAL PUNISHMENT.

1. The General Law.—Paragraph 98 of the present school law of New Jersey reads as follows:

No teacher shall be permitted to inflict corporal punishment upon any child in any school in this State (*Rev. St., 1877, p. 1087*).

Some cities, notably New York and Syracuse, in like manner forbid corporal punishment in their own schools. Other cities, like Chicago, permit corporal punishment, but discourage it. In the great majority of schools, the teacher has the right, conferred by usage and confirmed by legal decision, to enforce discipline by means of corporal punishment.

Even if a person over twenty-one years of age voluntarily attends school and is received as a scholar, he has the same rights and duties and is under the same restrictions and liabilities as if under that age (Me.[16]); but not for absence or refusal to take certain subjects, the proper punishment for this being expulsion (Ia.[9] Ind.[8, 14]).

The principal may, of course, punish for offences committed in other departments of the school (Wis.[22]).

It is sometimes held that punishment must be inflicted by the teacher and not by any supervisory officer, but on this point compare page 19.

Thus it is stated in the School Law of Pennsylvania:

The right of the teacher to inflict such punishment is founded upon the necessity of the case and not upon statute. It is abso-

lutely necessary that good order should be maintained in schools, and that all proper rules, regulations, and commands of the teacher should be strictly and promptly obeyed. Hence a necessity exists for sufficient power to enforce this duty, and therefore it is held that the teacher may inflict such reasonable corporal punishment upon the pupil as the parent might inflict for a similar case (Pa[6]; see also Pa.[7] N. C.[2, 3]).

Among the opinions and decisions appended to the *New School Law of Indiana* (1873) we find the law summed up in these paragraphs. The head-lines and references to other authorities are our own.

a. Largely in the Judgment of the Teacher.—A school teacher while in the school-room is responsible for maintaining good order, and he must be the judge to some extent of the degrees and nature of the punishment required when his authority is set at defiance; and although he will be held amenable to the law for any abuse of this discretion, still he will not be held liable on the ground of excessive punishment unless the punishment is clearly excessive, and would be held so in the judgment of reasonable men (Tenn.[3] Vt.[4]).

b. Cause, Instrument, Manner, Temper.—A teacher, in the exercise of the power of corporal punishment, must not make such power a pretext for cruelty and oppression; but the cause must be sufficient, the instrument suitable, and the manner and extent of the correction, the part of the person to which it is applied, and the temper in which it is inflicted, should be distinguished with the kindness, prudence, and propriety which become the station (Mass.[3 2] Ind.[15, 16] Ia.[9]).

c. No Unreasonable Violence.—A school teacher is liable criminally if, in inflicting punishment upon his pupil, he goes beyond the limit of reasonable castigation, and, either in the mode or degree of correction, is guilty of any unreasonable or disproportionate violence or force; and whether the punishment was excessive under the circumstances, is a question for the jury (Mass.[3 2]).

d. In Moderation.—A parent is justified in correcting his child by administering corporal punishment, and a schoolmaster, under

whose care and instruction a parent has placed his child is equally justified in similar correction; but the correction in both cases must be moderate, and given in a proper manner (Me.[17] N. C.[1]).

e. In Proper Spirit.—As to the spirit in which the punishment must be administered by the teacher, I would say it should not be in malice, and for the purpose of gratifying a malicious feeling, but in a proper spirit, with the sole object of maintaining his authority and preserving the order and decorum of his school; and even when inflicted in this spirit, it must not be excessive or inhuman; for such excess, the party inflicting it will be guilty of assault and battery (Ind.[17, 18]).

In New York, the compilation of Decisions of the Superintendent of Common Schools, published by Superintendent John A. Dix in 1837, contained this opinion (pp. 101, 102), which has since been regarded as authoritative in this State (Common School System, S. S. Randall, 1844, p. 262; 408):

If a teacher inflicts unnecessarily severe punishment upon a scholar, he is answerable in damages to the party injured. . . . With regard to the right to punish, no general rules have been laid down, and it would be difficult, if not impossible, to make any which would be applicable in every case. The practice of inflicting corporal punishment upon scholars in any case whatever has no sanction but usage. The teacher is responsible for maintaining good order, and he must be the judge of the degree and nature of the punishment required, where his authority is set at defiance; at the same time, he is liable to the party injured for any abuse of a prerogative which is wholly derived from custom.

2. Preferable to Expulsion.—Another decision in the same volume, p. 145, shows the view then held by Governor Dix as to the alternative of punishment and expulsion:

A teacher must, for the purpose of maintaining proper order and discipline in his school, have a right to employ such means

of correction as he may deem necessary to the accomplishment of the object. For any unnecessary or excessive severity he would be answerable for damages in a suit of law to the person aggrieved.

A teacher ought not, I think, to dismiss a scholar from school. From the nature of the common school system, teachers are, as a general rule, bound to receive and instruct all children sent to them. If a scholar is so refractory that he cannot be managed, and his dismission becomes necessary to the preservation of order, I think the teacher should lay the matter before the trustees for their direction; but not until the ordinary means of correction had been fully tried and found unavailing.

We believe this to be sound doctrine. While corporal punishment should be seldom necessary, the pupils should not know that the power to inflict it is taken from the teacher. Impertinence, for instance, always the utterance of a weak and cowardly nature, can be easily checked only by the certainty of immediate and physically painful punishment. Deprivation of recess or extra tasks often develop it into confirmed insolence, and expulsion follows. The boy whom one tingling blow of the ferule might have saved, thus grows up in low-bred ignorance. Instances like this we have known; and we do not believe that Boards of Education should take away this right of the teacher, or that teachers themselves should ostentatiously renounce it. If the teacher has determined to maintain good order without the use of the rod, it does him honor, and we wish him success. But let him keep his resolution to himself. There are pupils who fear only what hurts them; and they may bring about a crisis when only the rod, and that vigorously applied, will maintain order in the school room.

3. Severity of Punishment.—*a. General Principle.*—The old common law as to the extent of corporal punishment was as follows :

The law confides to school teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions (Wharton's Criminal Law, 5th ed., vol. i., p. 669).

But this remark is found in Cooleys' Blackstone, 2d ed, vol. i., p. 453.

It may be proper to observe, however, that public sentiment does not now tolerate such corporal punishment of pupils in schools as was formerly thought permissible, and even necessary.

No line can be drawn between the use of the rod and its abuse ; but the following cases will illustrate actual decisions:

b. A Case in North Carolina.—Rachel Pendergast kept a school for small children, and punished one of them with a rod to such an extent as to leave marks, all of which were likely to pass away in a short time and leave no permanent injury. The judge instructed the jury that if they believed that the child (six or seven years of age) had been whipped by the defendant at that tender age, with either a switch or other instrument, so as to produce the marks described to them, the defendant was guilty. The jury under this charge returned a verdict of guilty, and the case was afterward argued in the higher courts. Here Judge Easton held teachers exceed the limits of their authority when they cause lasting mischief, but act within the limits of it when they inflict temporary pain. In this case the marks were temporary, and in a short time disappeared. No permanent injury was done to the child. The only appearances that could warrant the belief or suspicion that the correction *threatened* permanent injury were the bruises on the neck and arms; and these, to say the least, were too equivocal to justify the Court in assuming that they did

threaten such mischief. We think, also, that the jury should have been further instructed, that however severe the pain inflicted, and however, in their judgment, it might seem disproportionate to the alleged negligence or offence of so young and tender a child, yet if it did not tend to produce or threaten lasting mischief, it was their duty to acquit the defendant; unless the facts testified induced a conviction in their minds that the defendant did not act honestly in the performance of duty, according to her sense of right, but under the pretence of duty was gratifying malice (N. C.[4]).

c. A Case in Illinois.—In Fairfield, Ill., a boy over fourteen failed to learn his grammar lesson. The teacher ordered him to take off his coat to be whipped, or to be expelled. The boy refused, and was expelled. A controversy arose as to the demand made for the boy to pull off his coat. The Superintendent's decision was as follows :

The law will not sustain the teacher in so barbarous an act as compelling a pupil to take off his coat and be whipped for failing to learn a lesson. Such an act would subject the teacher to prosecution, and I do not believe there is a court in the State that would not impose a fine upon him. . . In my opinion, any teacher that cannot create an interest in his pupils on the side of good order and good lessons without resorting to such means, is not fit for the school-room, and the sooner a district dispenses with his services the better (Ill.[22]).

d. A Case in Connecticut.—On July 21st, 1865, John G. Lewis, principal of one of the public schools of New Haven, Conn., was brought before the City Court for assault and battery on Francis M. Hoban, one of his pupils. The Court stated the case, and decided it as follows :

On the 21st of July last, and during the regular school hours, Mr. Lewis, as a punishment for some supposed misdemeanor on the part of young Hoban, directed him to take his book and go to the recitation room. The order was reluctantly obeyed. At the

closing of the school, but before the pupils had retired, he came out of the room without permission, and was immediately ordered back by the teacher. The order was several times repeated, and Hoban repeatedly refused to obey. Seizing two or three brushes, which were lying near by, with oaths and language most foul, and threats of violence if the teacher approached him, he dared him to come on, and all this in the presence of a large number of the scholars. Hoban is a boy of fourteen years of age, of fair size for his years, and, as it would seem, possessed of more than ordinary strength, It is clear, under all the circumstances, there was but one course for the teacher to pursue. He must vindicate his authority. It was necessary for the good of the school, as well as of the boy himself, that he should learn obedience and submission to that authority. For the milder offence, a mild punishment had been inflicted by sending him to the recitation-room to study by himself. For the more serious offences, the insults to the teacher, the refusal to obey a proper command, the vulgar and profane language, the threats to kill the teacher if he should attempt to whip him, it was manifestly fitting and proper that he should receive a severe punishment. Mr. Lewis now approached the boy, who endeavored to strike him with the brushes. A struggle ensued, in which the teacher, notwithstanding the violent resistance of the pupil, succeeded in pushing him into the recitation-room; but I do not find that he used more force than was necessary to accomplish this object. I do not find that the whipping was either cruel or excessive, and though severe, taking into consideration all the circumstances under which it was inflicted, it was not in my judgment unreasonable, but entirely justifiable. The accused is therefore discharged (Conn.[5]).

e. Two Cases in New York.—(1) The facts appear to be that the pupil flatly refused to obey the teacher, by not taking the seat he was directed to take. The teacher came toward the boy, intending to compel him by force to take the seat assigned to him. The boy, with an oath, bade the teacher not to come near him, and, as the teacher approached, the boy struck at him several times. The teacher caught the boy, and with force put him in his seat, the boy meantime kicking, striking, yelling, and swearing. To stop

this outrageous and unseemly noise, the teacher took the most effectual measure at his command; he intercepted the passage of air between the lungs and the vocal organs long enough to suppress the disturbance, but not long enough to injure the boy. But the boy was not subdued by any such gentle restraint, for no sooner was he left alone than he ran out of doors. The teacher pursued and caught him, and brought him back to the schoolroom, not, it appears, without some considerable force, for the boy struggled with all his strength; and it would really not be strange if in the struggle he received some severe blows. And for this the Superintendent is asked to annul the certificate of the teacher. I decline to do anything of the kind. The teacher, in the matter of the boy, did no more than he was compelled to do; he might have done much more, and still be acquitted of inflicting cruel and unusual punishment. It was not cruel, and if it was unusual, it was only so because the conduct of the boy was unusual (409.)

(2) A teacher, for an act of disobedience, ordered a boy, fifteen years of age, to hold out a book of the ordinary size used in school, at arm's length, level with his shoulder. The boy, after holding it in that position from five to eight minutes, let it fall, and said he could not hold it any longer. On being ordered to hold it out again, he peremptorily refused. The teacher then, with a curled maple rule, over twenty inches long, one and three quarters wide, and half an inch thick, struck him from fifteen to twenty blows on his back and thighs, and in so severe a manner as to disable him from leaving the school without assistance. A physician was called, and found his back and limbs badly bruised and swollen. The teacher on the succeeding day sent him to a physician, who pronounced him "very badly bruised." It was ten or twelve days before he so far recovered as to be able to attend school. The Superintendent expresses his unqualified disapprobation of a punishment so severe and unreasonable. If the disobedience of the boy had been the result of sheer obstinacy and wilfulness, it could not justify the infliction of fifteen or twenty blows with such a bludgeon upon the back and thigh of a boy, disabling him for a fortnight. Such a measure of punishment for such an offence would be sufficient ground for annulling a certificate (407).

CHAPTER XI.

IN LOCO PARENTIS.

We come now to a relation of the teacher toward his pupil too broad and general to be defined by statute law, but referred to in common law under the expression *in loco parentis*—in place of the parent. Just now there is a tendency to regard this phrase as a legal fiction, and to consider it the sole duty of the teacher to instruct in the branches laid down in the course of study. For instance, it is becoming common to forbid all exercises of a religious character. This action is usually prompted by a desire to anticipate and prevent demands for sectarian apportionments; but some regard it as a first step toward relieving the teacher at once of the responsibility and of the right to control the pupils in any thing outside of their studies. The attendance and the character of pupils and even their conduct while in school would be no concern of the teacher. If the child failed to comply with the prescribed regulations, the remedy would be simply to expel him. This view, emphatically set forth in a prominent magazine,* we believe no true teacher ever held.

The old Massachusetts law has the true ring of sound educational principle :

> It shall be the duty of the president, professors, and tutors of the University at Cambridge and of the several colleges, of all

* The *National Teachers' Monthly*, for June, 1875.

preceptors and teachers of academies, and of all other instructors of youth, to exert their best endeavors to impress on the minds of children and youth committed to their care and instruction the principles of piety and justice, and a sacred regard to truth; love of their country, humanity, and universal benevolence; sobriety, industry, and frugality; chastity, moderation, and temperance; and those other virtues which are the ornament of human society and the basis upon which a republican constitution is founded; and it shall be the duty of such instructors to endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above-mentioned virtues to preserve and perfect a republican constitution, and secure the blessings of liberty, as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite views (Mass.[33] Cal.[10] R. I.[6]).

Our public schools were created to make, not scholars simply, but men and women. When education is confined to the imparting of certain branches of knowledge, it will have no claim to be maintained at public expense. Penmanship and physics taught where only the intellect is trained, are as likely to be the weapons of the forger and the burglar as they are to be the support of law-abiding citizens. Healthy care for the mind and body, a right purpose in life, sound and intelligent morality—these are the lessons the public school should instil; beside them, arithmetic and grammar and geography are incidental in importance. They must first be exemplified in the teacher's life, and thus become a continual lesson to every pupil. But this is not enough. The true teacher will know his pupils as individuals, and will feel in each an interest which only the term parental describes.

He sees among his pupils a slovenly boy. Judiciously, quietly, here a little and there a little, he conveys hints which bear fruit in clean hands, polished shoes,

and brushed clothes. He notices a girl too showily dressed, and, choosing his time, appeals to her kindness not to make her less wealthy neighbors uncomfortable. He observes a pale student who never goes out at recess, invites him to a walk, and impresses upon him the futility of cultivating the mind to the neglect of the body. He overhears the coarse expressions of a good-natured, stable-bred young fellow, and finds occasion to point out to him that the only sure indication of culture is the language one uses. He finds untruth a prevalent vice. Not satisfied with general instruction, exhortation, and reproof, he seeks out the individuals in whom it is most alarming, and impresses upon each that the lie stamps the utterer at once a coward and a fool. He sees in a pale face, and reserved, absent-minded manners, indications of a most common and deadly crime. Cautiously, kindly, but steadfastly, he labors to save a life from ruin and a soul from perdition. These, and such as these, are the efforts which task the conscientious teacher. He dishonors his profession who neglects them.

We are told that this is a great deal to require; that it demands of the teacher a combination of talents with common-sense which would make him eminent in any profession. True enough: and why not? The time has been when he became a teacher who lacked the brains to succeed at anything else. The time is coming when he shall become something else who lacks the brains to succeed as a teacher. Away with the narrow-minded notion that the teacher need only impart square feet of problems and linear yards of paradigms. No other profession exacts at once such versatility and such thoroughness; such judgment and such insight into human nature; such sincere politeness; and such hon-

est manhood and womanhood. The compiler of this book has been under the instruction of many teachers, in ungraded, grammar and high schools, in the academy, in the college, and in the professional school. Among these teachers were learned men and noble men, whom he respects and reveres. But of them all, he recognizes but one as having exerted upon him a marked influence. Nor can he better close these articles than by quoting here a grateful reference which he made years ago to the truest teacher he ever knew—Rev. William Hutchinson, late Principal of Norwich (Conn.) Free Academy:

I can imagine no life more unsatisfactory than that of an incapable teacher. Bullied by the large boys; himself a bully to the smaller; jeered to his face; insulted behind his back; his school a bedlam; his recitations a farce; hired only because cheap—he draws his grudgingly paid stipend in the delusion that he is respectable, because a professional man.

Such wert not thou, O Zeus—name fortuitously bestowed, but applied in no disrespectful spirit, and cherished among the healthiest recollections of the past. Happy were we who sat at thy feet. Happy in sound and accurate instruction; happy in the instilment of a love for thorough scholarship; happy in the example and fellowship of one who was in every way a *man*. We were careless and wayward; far less than we ought did we profit by thy teachings; but the most indifferent of us failed not to catch some warmth from thy glowing countenance, and the most earnest gladly acknowledged thy quickening influence. If it be noble to give one's every energy to his calling; to wrestle with bodily infirmity that one's duty be faithfully performed; to persevere amidst perverseness and ingratitude in conscientious attention to the minds and characters of one's pupils—then wert thou a nobleman. And if it be a satisfaction to have wrought in all committed to thy charge a lasting impression of the dignity of Christian manhood, then hath thy life's labor been not unrewarded.—*Yale Literary Magazine*, June, 1869.

REFERENCES.

ARABIC figures in parenthesis, as (406), indicate the page of the New York State Code of Public Instruction, edition of 1868. Italic figures in parenthesis, as (*406*), indicate the page of the New York State Code of Public Instruction, edition of 1879. Heavy face figures in parenthesis, as (**406**) indicate the page of the New York State Code of Public Instruction, edition of 1888.

All other references are to authorities in different States, and will be found below, arranged first alphabetically by States, and then numerically in the order of the references. Thus, for (Mass.[16]), look below for MASSACHUSETTS, and under this State look for 16, and the reference is found to be 5 Cush., 198.

CALIFORNIA.

To Law Reports:

3. 48 Cal., 36
7. 6 Cal., 94

To School Law, edition of 1876:

1. § 1696
2. 1673
4. 1685
5. p. 63
6. § 1868
8. p. 62
9. p. 61
10. § 1702

CONNECTICUT.

To Law Reports:

1. 41 Conn., 442
2. 46 " 400,403
3. 33 Conn., 298
4. 47 " 365

5 is to *Am. Ed'l Monthly*, ii. 372.

DAKOTA.

1, 2, and 3 are all to the School Law published in the first number of *Home and School*.

DELAWARE.

To Law Report:

1. 3 Houst., 633

ILLINOIS.

To Law Reports:

1. 39 Ill., 101
   15 " 65
   117 " 30
   (But see also Bateman's Decisions, 137.)
2. 16 Ill., 147
   87 " 255
   92 " 293
4. 15 Ill., 65 — (dup. 45 Ill., 2)
5. 39 " 609
6. 69 " 80
7. 71 " 532
8. 87 Ill., 255
9. 67 " 511
10. 88 " 563
11. 2 Brad. 458
    17 " 347
12. 36 Ill., 71
13. 63 Ill., 356, 553
    87 " 303
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    Ill. Teacher, 1868, p. 28.
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15. 97 Ill., 375
16. Chicago *Legal News*, vii., 309.
18. 87 Ill., 303
19. 79 " 567
20. 95 " 263
21. 95 " 263— (dup. K. & S. Cyc.)

The following are to decisions of the State Superintendent published in the *Educational Weekly* at dates named :

3. Jan. 3, 1878
9. " 10, "
22. Nov. 15, 1877

No. 15 is to the *Common School*, Oct., 1876, p. 127.

INDIANA.

To Law Reports :

1. 26 Ind., 337
79 " 585
4. 26 " 337
5. 70 " 575
7. 42 Ind., 200
8. 69 " 295
11. 51 " 206
14. 79 " 75
15. 4 Ind.. 290
16. 4 " 633
18. 14 Johns. 119

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2. 1877, p. 499
3. 1876, 522
5. 1876, 568

Miscellaneous :

9. Town Officers' Guide, 1877, p. 167.
10. School Law, 1873, p. 57.
17. " " pp. 87, 88.
12. *Common School Teacher*, June, 1878, p. 124.
13. *Am. Ed'l Monthly*, ii. 297.

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To Law Reports :

1. 16 Ia., 214
2. 22 " 171
3. 40 " 444
4. 33 " 105
5. 14 " 28
6. 21 Ia., 590
7. 31 " 562, 568
9. 50 " 152
10. 1 " 359
12. 56 " 479
14. 31 Ia.. 568
16. 45 " 522
17. 30 " 429
18. 31 " 562
20. 45 " 248

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8. Oct., 1877
11. March, 1877
13. Jan., 1878
19. Dec., 1876.

No. 15 is a decision of Supt. Van Coellen, printed in the *Educational Weekly.*

KANSAS.

To Law Reports :

1. 8 Ks., 362
2. 10 Ks., 283

KENTUCKY.

To Law Reports :

3. 3 Bush, 255

To opinions of the State Superintendent, published in *Home and School*

5. v. 377
10. iv. 569
12. v. 245

To the *Kentucky School Lawyer*, published as an appendix to the *State School Report* for 1878 :

1. pp. 27, 28
2. 180
4. 120
6. 161
7. 110
8. 112, 113, 163, 165, 167, 206
9. 61
11. 188, 189
13. 172, dup. 192, 193

LOUISIANA.

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1. 16 Ann. 163

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1. 20 Me., 337
4. 20 " 37
5. 26 " 56
6. 20 " 154
7. 38 Me., 376
8. 38 " 376
9. 27 " 281
12. 38 " 164, dup. School Law, 24
15. 38 Me., 376
16. 27 " 266
17. 27 " 280

The following are to the School Law, edition of 1878:

2. p. 65
3. "
10. p. 66
12. 24
13. p. 36
14. 24

No. 11 is to the *New York Teacher*, vi. 432.

MASSACHUSETTS.

To Law Reports:

4. 9 Allen, 94
7. 15 Mass., 272
8. 12 " 375
9. 16 " 28
10. 3 Pick., 201
11. 123 Mass., 545
12. 12 Gray, 339
13. 2 Allen, 592
14. 3 Pick., 379 dup. 38th Rep. 150
16. 5 Cush., 198
17. 8 " 160
18. 12 Allen, 127
19. 105 Mass., 475
20. 23 Pick., 224
21. 116 Mass., 366
22. 22 Pick., 225
27. 111 Mass., 499
28. 133 " 103
32. 4 Gray. 36

The following are to Reports of the Board of Education:

1. 38th, pp. 150, 160
2. 10th, 169
3. 183
5. 50th, 103
6. 102
14. 38th, 150
24. 50th, 104
25. " 106
26. 38th, p. 151
29. 38th, p. 159
31. 10th
33. 38th, 147
34. 50th, 113

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23. Laws of 1885, chap. 332.
26. *N. Y. Teacher*, iii. 136.
30. " " ii. 223.

MICHIGAN.

To Law Reports:

1. 7 Wend., 181
2. 39 Mich., 480
3. 43 Mich., 480

No. 4 is to School Law, edition of 1873, p. 206.

MINNESOTA.

To Law Reports:

1. 12 Minn., 448
2. 27 Minn., 433
3. 20 Minn., 72

School Law, 1887:

4. p. 37
5. p. 99

MISSISSIPPI.

1. School Law, edition of 1886, p. 21.
2. " " " " ". 14.

MISSOURI.

To Law Reports:

1. 51 Mo., 21
2. 31 " 319
3. 55 " 149
5. 53 " 472
6. 71 Mo., 628
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9. 38 Mo., 391
10. 66 " 286
11. 48 " 253

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To Law Reports:
1. 1 Neb., 76
2. 6 Neb., 167

NEW HAMPSHIRE.

To Law Reports:

1. 19 N. H., 170
3. 59 N. H., 473
4. 6 Foster, 470
5. 49 " 199

No. 2 is to School Report, 1877, p. 175.

NEW JERSEY.

To Law Report: 1. 34 N. J. L., 308

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2. p. 25 3. p. 17 4. p. 41

NEW YORK.

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16. 11 Wend., 90
25. 29 Hun., 606
33. 2 Wallace, 177
41. 23 Barb., 176
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46. 13 Ab. Pr., 159, (**68, 100, 241, 737**); See also Bateman's Illinois Decisions, 120; 45 Wis., 150; 53 Ct., 481; 79 Ill., 567
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61. 32 N. Y., 489
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2. p. 410. (See also **43, 400**; but **297, 401**)
8. p. 410 20. pp. 395, 397 21. p. 416 30. p. 399

The following are to the Code of 1888:

16. pp. **76, 121** 33. p. **712, 719** 35. p. **96** 36. p. 294
37. pp. **704, 723, 731**; (but see **703, 705, 708, 710**)
40. p. **115** 45. p. **729**

The following are to decisions of the State Superintendent, as numbered in the records at Albany:

4. 2145
5. 2191
6. 2015
8. 2191
10. 1942, (**694**)
11. 1907
12. 2003
13. 2194
14. 2480, (**392, 393, 695, 697**)
15. 1982
17. 1978, (**492, 497, 498, 499**)
18. 1976
19. 1677
20. 1864
21. 1738, 1831
22. 1665, 1753 } (**395, 715, 720, 728**)
1803, 2114
23. 1808, (**744, 765**)
24. 2245, (**394, 399**. See also 87 Ill., 255; 92 Ill., 293)
26. 1978, (But see **45, 354**)
27. 1825, 2217, (**720, 721**)
28. 2081
29. 1910 } (**43, 423, 424, 429, 713, 714, 721, 727**)
31. 1919 }
32. 1845, (**721, 722, 725, 726, 729**)
37. 1751.

38. 1713 (dup. 3523) (**43, 47, 404, 705**)
39. 2139 (**395, 705**)
43. 1793, (**732**)
44. 3510, (**701**)
48. 1687, (**87, 606**)
49. 1874 (dup. 1682) (**605**; see also 63 Ill., 533; 87 Ill., 303
52. 1753, 1763, (**618—622**)
53. 1985
54. 2091, (**601**)
56. 1725
57. 1695
58. 1960, (**601**)

The following are to decisions printed in the *N. Y. Teacher:*

7. x. 282, (**700**)
34. ii. 271
45. ii. 423
48. vii. 116
51. ii. 79-82

Miscellaneous:

3. *School Bulletin*, Feb., 1886, p. 62.
47. *National Teachers' Monthly*, iii. 347. (**240**)
50. Orders and Decisions, State Dep't, viii. 102.
59. Letter Book, State Dep't, July 21, 1875. (**603**)

NORTH CAROLINA.

To Law Reports:

1. 5 Jones, 98
2. 2 Ired., 50
3. 68 N. C., 322
4. 2 Dev. & Bat., 365

OHIO.

To Law Reports:

2. 22 Ohio St., 194
3. 36 " 429
4. 29 " 89
5. 23 Ohio, 211
9. 17 " 402
10. 21 Ohio, 666
11. 29 " 89

Miscellaneous:

1. State Commissioners' Report, 1875.
6. Kentucky *School Lawyer*, p. 190.
7. Kiddle & Schem's Cyclopedia, p. 84.
8. *National Teacher*, July, 1874.

OREGON.

To Law Report: 1. 3 Or., 365

PENNSYLVANIA.

To Law Reports:

1. 2 Penn., 204
2. 43 Pa. St., 318
3. 56 Pa. St., 315
4. 49 " 151
5. 3 Pitts., 264, 267
7. 5 L. J. R., 78

No. 6 is to School Law, edition of 1873, p. 52.

RHODE ISLAND.

To Common School Manual, 1873:

1. p. 84
2. 69
3. p. 25
4. 145, 146
5. p. 199
6. 28

TENNESSEE.

To Law Reports:

1. 2 Cold., 181
2. 5 Lea, 525
3. 3. Head., 455

VERMONT.

To Law Reports:

1. 12 Vt., 592
2. 20 " 495
   28 " 575
   29 " 433
3. 27 " 755
4. 20 " 487
5. 30 " 586
6. 28 " 575
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17. 48 Vt., 444
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23. 32 " 120
24. 32 " 114

WISCONSIN.

To Law Reports:

4. 25 Wis., 551
6. 38 " 100
10. 51 Wis., 554
11. 35 " 59
13. 45 Wis., 150

The following are to decisions of the State Superintendent, published in the Wisconsin *Journal of Education*:

1. 1877, p. 223
2. " 320
3. 1876, 296
5. 1878, 315
7. " 224
8. " 223
9. 1877, p. 223
12. 1876, 79
14. 1877, 362
15. " 125
16. " 125
17. 1876, 27
18. 1875, p. 30
19. 1877, 364
20. 1878, 173
21. 1877. 124
22. 1878, 223

Miscellaneous:

22. Laws of 1874, chap. 135.

FRANCE.

1. Common School Manual, R. I., p. 200.

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APPENDIX.

The following references to and paragraphs from the New Code could not be incorporated in the text, the pages of this book being already electrotyped when the proof copy was received, but are of interest enough to warrant insertion here. Where there is change or addition to the law or illustrations of it as given in this book, the text of the Code is given. In other cases the pages given are only for convenience of reference.

Page 19. 2. See p. 42 of the New Code, 1888.

a See p. 465.

b See p. 379.

e See p. 391.

f See pp. 111, 378, 384, 458.

20. *d* See pp. 112, 701.

21. *e* The candidate must be 16 years old. See pp. 384, 699.

α See pp. 699, 700.

β No certificate can be granted to a teacher who has not passed a satisfactory examination in physiology and hygiene with special reference to the effects of alcoholic drinks, stimulants, and narcotics upon the human system (p. 113.) See also p. 728.

24. 3. See p. 698. For note, see pp. 405, 698.

25. *a* Commissioners' certificates and normal diplomas may also be annulled by the State Superintendent "upon cause shown to his satisfaction" (pp. 5, 383.) For second paragraph of note, see p. 702. For last paragraph, see p. 696.

27, second paragraph, see pp. 692, 694, 697.

fourth paragraph, see pp. 123, 405, 495, 497, 499.

fifth paragraph, see pp. 492, 504.

sixth paragraph, see pp. 495, 499, 734.

Page 29. *a* See p. 732.

30. *b* The first clause should read: "The applicant must not be related to the trustee, or to the living wife or husband of the trustee, or to any one of the three, or to the living wife or husband of any one of the three, as grandfather," etc. (p. 398.)

31, first paragraph, see pp. 718, 721.

last paragraph, see pp. 405, 716.

32. 3. See pp. 115, 399, 449, 722.

33. Memorandum, see p. 400.

Monthly payment, see p. 115.

34. *b* Contract by the year includes two months of summer vacation. Where teachers are paid one-twelfth of the year's salary each month, a teacher who serves ten months of school must receive the full twelve months' pay (p. 707.)

A contract "for one day only, and to close every night," is void, as being in conflict with the spirit of the school laws and against public policy (p. 735.)

35. *c* See p. 61. The State Superintendent may impose upon the teacher the duty of assisting the trustees in making an examination of the contents and condition of the school library; and when such direction is given the teacher may close the school one day for the purpose of making such examination, and the same shall not be accounted as lost time (pp. 178, 465.)

35. *d* See pp. 409, 707, 711. The contract may be conditional upon the regular attendance of the teacher upon local teachers' meetings under direction of the trustees (p. 774.)

36, first paragraph, p. 74.

2, *a* See p. 723.

37. *c* See p. 604.

38, last paragraph, see pp. 704, 707, 708, 710. A practice has prevailed . . . . of engaging with the teacher that he shall board with the parents of the

children alternately. There is no authority for such a contract, and it cannot be enforced by the inhabitants. The best arrangement is to give the teacher a specific sum as wages and let him board himself (pp. 395, 710.)

Page 40, 1. See page 61, first paragraph, see p. 405.

2, See p. 712. The first line should read, "If his certificate be annulled, or expire," etc.

2, note, see p. 732.

41, fourth paragraph, see pp. 699, 700.

last paragraph, see p. 728.

42. *c* See pp. 703, 731.

46. 5. See pp. 403, 720.

6. See p 705.

49. 1. See p. 712.

50. *c* Children who have not been vaccinated may be excluded from school till they have become vaccinated (p. 87.)

Colored children must be admitted to the public school where no separate school for them has been established by the district (p. 514.)

53, first paragraph, see p. 603.

last paragraph, see 13 Ill. App., 520.

57, first paragraph, see pp. 68, 605, 621.

second paragraph, see pp. 92, 98, 112, 116, 220, 239, 240, 466.

72, second paragraph. Pupils cannot be suspended for refusing to apologize to a teacher for declining to sit by a very hot stove as a punishment (p. 601); or for wearing the hair in a manner forbidden by the teacher but approved by the mother (p. 602.)

72. 3. See p. 267.

4. See p. 163.

The following quotations from the last edition of Bateman's Illinois Decisions, also received since these pages were electrotyped, are worthy of note :

Page 28. A contract is not complete without the consent of both parties. A vote by a school board to employ a person to teach does not bind the board until it has been communicated to and accepted by him. Up to the time of acceptance, the board may reconsider its vote. In the same way, a person offering to teach is not bound until the board has accepted his offer. A contract may be completed by mailing a letter or sending a telegram of acceptance (111 Ill., 421; 40 Mich., 84; Pollock on Contracts, p. 8). (p. 138.)

The school board must itself employ all teachers, and may not contract with a teacher whom it has employed to supply his own assistant or substitute (88 Ill., 563; 29 Ohio S., 161) (p. 138.)

34. The school month in Illinois is a calendar month, and pay for fractions of the month will vary according as the number of school days in the month varies from 20 to 23 (p. 181.)

36. *b* The teacher may be dismissed if he leave a school to a substitute, even though it be shown that the substitute is competent (88 Ill., 563) (p. 142.)

40. 2. If the contract ceases by the expiration of the teacher's certificate, he can recover wages for the time he has taught while the certificate was in force (p. 171.) But if he teaches for a while without a certificate and then secures one, the directors cannot pay for the time taught without a certificate (p. 173.) Superintendents of city and village schools must have a certificate (p. 173.)

49. 1. In Illinois, directors may provide that children under twelve years of age shall not be confined in school more than four hours daily (p. 115.)

59. To conclusion number 4 of Sup't Bateman it is added that this exemption from prescribed studies on request of parents does not apply to declamation and composition. "A regular daily study, and a brief

general exercise, occurring only at intervals of from one to four weeks, are very different things—so different that the considerations applicable to the one do not apply to the other at all" (p. 145.)

Page 66, last paragraph. In Illinois, the teacher may either refuse or insist upon reading the Bible or offering prayer, in opposition to the wishes of the directors—"It is a sacred personal right of which he cannot be deprived." The scholars must also have the option of attending or not as they desire. But the directors may insist that time out of school hours be taken for it (p. 128.)

71. In Illinois, directors "may suspend or expel pupils who may be guilty of gross disobedience or misconduct, and no action shall lie against them for such expulsion or suspension" (p. 115.)

73. This unusual view is sustained in Illinois (p. 149.)

84. 5. A rule forbidding the use of tobacco in the school building may be enforced (p. 125.)

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